

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

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4  
5 SHAWN DRUMGOLD, ) C.A. No. 04-11193-NG  
6 PLAINTIFF ) Courtroom No. 2

7 VS.

8 TIMOTHY CALLAHAN, ET AL., ) 1 Courthouse Way  
9 DEFENDANTS ) Boston, MA 02210

10  
11 JURY TRIAL DAY 5

12 SEPTEMBER 15, 2009

13 9:14 a.m.  
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19 BEFORE THE HONORABLE NANCY GERTNER  
20 UNITED STATES DISTRICT COURT JUDGE  
21  
22  
23

24 VALERIE A. O'HARA  
25 OFFICIAL COURT REPORTER

1       A P P E A R A N C E S:

2               ROSEMARY CURRAN SCAPICCHIO, ATTORNEY, Four Longfellow  
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4               Tommasino & Tommasino, by MICHAEL W. REILLY, ESQ.,  
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6       Plaintiff;

7               Roache & Malone, LLP, by JOHN P. ROACHE, ESQ., 66 Long  
8       Wharf, Boston, Massachusetts 02110, for the Defendants.

9               Bletzer and Bletzer, P.C., by HUGH R. CURRAN, ESQ., 300  
10       Market Street, Brighton, Massachusetts 02135, for the  
11       Defendants.

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14       Defendants.  
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**EXAMINATION**

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ROBERT A. GEORGE				
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## EXHIBITS

(None marked)

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PROCEEDINGS

THE CLERK: All rise. United States District Court is now in session. All rise for the jury.

THE COURT: You can all be seated. Ladies and gentlemen, because of scheduling issues, Mr. Evans will not be on the stand. Call the next witness.

MS. SCAPICCHIO: Thank you, your Honor.  
Plaintiffs call Attorney Robert George.

ROBERT A. GEORGE, having been duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MS. SCAPICCHIO:

Q. In a loud clear, voice, Mr. George, can you please state your name for the record spelling your last name for the record court reporter.

A. Robert A. George, G-e-o-r-g-e.

Q. And what do you for a living, Mr. George?

A. I'm a trial lawyer.

Q. And what type of law do you practice primarily?

A. Criminal law.

Q. And how long have you been -- well, are you a criminal defense attorney?

A. Yes, I am.

Q. How long have you been a criminal defense attorney?

A. Going on 30 years.

1 Q. And in your course as A criminal defense attorney, have  
2 you had occasion to represent defendants in murder cases?

3 A. Yes, I have.

4 Q. Okay. And I'm going to direct your attention to August  
5 of 1988. Were you involved in the defense of Commonwealth  
6 vs. Shawn Drumgold and Terrance Taylor?

7 A. Yes, I was.

8 Q. How were you involved in that case, Attorney George?

9 A. I was Terrance Taylor's defense lawyer.

10 Q. And Terrance Taylor was whom?

11 A. He was the co-defendant to Shawn Drumgold charged with  
12 the same crimes.

13 Q. Can you explain what a co-defendant is for the jury,  
14 please?

15 A. A co-defendant is when you're charged with the same  
16 crimes as someone else and you're being tried at the same  
17 time.

18 Q. During the course of your representation of Mr. Taylor,  
19 do you remember who was prosecuting the case?

20 A. Phil Beauchesne.

21 Q. Okay.

22 A. Do you want me to spell that for you?

23 Q. Yes.

24 A. B-e-a -- like a spelling test -- c-h-e-s-n-e.

25 Q. There's a u in there. It's close. In any event,

1 Attorney Beauchesne was the attorney that represented the  
2 Commonwealth; is that right?

3 A. He was the prosecutor on the cases.

4 Q. Okay. And during the course of your representation of  
5 Mr. Taylor, did you have conversations with Mr. Beauchesne  
6 regarding discovery?

7 A. Yes.

8 Q. Okay. And did you request in your capacity of  
9 representing Mr. Taylor exculpatory evidence?

10 A. Yes.

11 Q. Did you learn in the course of your representing  
12 Mr. Taylor, did you learn of any evidence regarding  
13 Ricky Evans?

14 A. Yes.

15 Q. Okay. Could you first let me back up a minute. Could  
16 you first explain to the jury what exculpatory evidence is  
17 and how it's important in a criminal defense?

18 A. When you're representing someone in a criminal case,  
19 you're looking to get all the evidence you can get prior to  
20 trial that tends to exculpate them or tends towards their  
21 innocence, which could be almost anything that's admissible  
22 in the courtroom. It could amount to almost anything, but  
23 it's evidence you should have in order to defend somebody  
24 against what they're charged with.

25 Q. That's in general. Specifically in this case I'm going

1 to direct your attention to a witness by the name of  
2 Ricky Evans. Do you remember being notified about a witness  
3 by the name of Ricky Evans in the case of Commonwealth vs.  
4 Terrance Taylor and Shawn Drumgold?

5 A. I remember Ricky Evans. I do remember Ricky Evans,  
6 yes.

7 Q. Okay. Do you remember during the course of your  
8 representation of Mr. Taylor whether or not you ever  
9 received any information about Mr. Evans being put up in the  
10 Howard Johnson's?

11 A. No.

12 Q. Did you ever receive any information about Ricky Evans  
13 charging meals in the Howard Johnson's?

14 A. No.

15 Q. Did you ever receive any information regarding Mr. Evans  
16 or promises to Mr. Evans on his pending criminal cases?

17 A. There was some -- there was some evidence that his  
18 default warrants were going to be cleared up for him, but  
19 that was it.

20 Q. Okay. But other than his default warrants being cleared  
21 up, did you receive any evidence prior to the trial of  
22 Shawn Drumgold and Terrance Taylor regarding whether or not  
23 Detective Callahan made any promises to Mr. Evans regarding  
24 assistance on his pending open matters?

25 A. No.

1 Q. During the course of your representation of Mr. Taylor,  
2 specifically with respect to Mr. Evans, did you ever learn  
3 that Detective Callahan showed Mr. Evans photographs of  
4 Shawn Drumgold, Terrance Taylor and Theron Davis?

5 A. Absolutely not.

6 Q. Did you ever learn during the course of your  
7 representation of Terrance Taylor that Mr. Evans pointed to  
8 a photograph of Mr. Davis indicating that was the person  
9 from the neighborhood everyone had indicated had done the  
10 shooting?

11 A. No, I would have remembered that.

12 Q. Now, during the course of this trial, do you remember  
13 whether or not Detective Callahan was second seating  
14 Phil Beauchesne?

15 A. Yes.

16 Q. Could you explain to the jury what second seating  
17 means?

18 A. Well, Mr. Curran and his associate are over there, it's  
19 a nonlawyer sitting at a table helping you with the case  
20 with the permission of the Court because you're not supposed  
21 to be sitting inside the bar unless you're a lawyer.

22 THE COURT: That's Mary Jo Harris, Mr. Curran's  
23 associate.

24 THE WITNESS: I'm sorry, Mary Jo.

25 THE COURT: It's important to make that clear.



1 A. Second chair in the way we're talking about would be a  
2 nonlawyer sitting with someone to help.

3 Q. If you had a police officer or law student helping you  
4 at counsel table, that's what you refer to as second  
5 seating?

6 A. Yes.

7 Q. Now, during the course of the trial in this case, do you  
8 remember, first of all, have you had an opportunity to  
9 review Mr. Evans' trial testimony?

10 A. Yes, I did.

11 Q. Where did you get that trial testimony?

12 A. From you.

13 Q. Okay. And having reviewed Mr. Evans' trial testimony,  
14 do you have a present memory as to whether or not you  
15 questioned Mr. Evans regarding any promises related to his  
16 pending cases?

17 A. I asked him some questions about his default warrants  
18 that were pending, and that was it.

19 Q. Okay. And do you remember at some point there being a  
20 break in the proceedings and both you and Attorney Steve  
21 Rappaport -- let me back up, did Steven Rappaport represent  
22 Shawn Drumgold?

23 A. Yes, he did.

24 Q. He was the attorney that represented Shawn Drumgold at  
25 trial; is that right?

1 A. Yes.

2 Q. Now, at some point do you remember there being a break  
3 in the proceedings where there was a voir dire of Mr. Evans  
4 regarding his pending cases?

5 A. Yes.

6 Q. Okay. And can you tell the jury what you recall about  
7 that proceeding?

8 A. Well, after I read it, of course, it was a long time  
9 ago. It was in '88, '89. Evans acknowledged some of the  
10 charges were his, and he said that others were not. There  
11 was some back and forth what was his and what was being made  
12 up or what wasn't his. Other than that, he said nothing  
13 else, no promises had been made to him in regard to any of  
14 his cases.

15 Q. And do you remember whether or not Detective Callahan  
16 was in the courtroom during that proceeding?

17 A. My memory is that Detective Callahan was seated at the  
18 table in front of the clerk with Mr. Beauchesne throughout  
19 the trial, that's my memory.

20 Q. Now, Attorney George, with respect to do you have a  
21 clear memory of any representations made by Assistant  
22 District Attorney Phil Beauchesne relative to any promises  
23 made to Ricky Evans regarding his pending cases at that voir  
24 dire on October 4th of 1989?

25 A. After reading the transcript, my memory is Phil

1 Beauchesne represented to the Court that there were no other  
2 promises made to him on his pending cases.

3 Q. And do you remember whether or not Mr. Beauchesne also  
4 made representations that to the best of his knowledge  
5 nobody from the police department had made any promises?

6 MR. CURRAN: Objection.

7 THE COURT: Overruled.

8 A. After reading the transcript, that's exactly what he  
9 said.

10 Q. Do you have a specific memory of Mr. Beauchesne's exact  
11 words?

12 A. I believe Beauchesne reported to the Court,  
13 Judge Alberti, that no promises had been made by either him  
14 or by anyone in the police department or anyone to his  
15 knowledge to Ricky Evans as regards to any of his cases.

16 Q. And as a result of that representation that Assistant  
17 D.A. Phil Beauchesne made to the Trial Judge. Who was the  
18 Trial Judge back then?

19 A. Charles Alberti.

20 Q. And as a result of those representations that  
21 Assistant D.A. Phil Beauchesne made to the trial Judge back  
22 then, do you remember there being actually a voir dire where  
23 Mr. Evans took the stand?

24 A. Yes.

25 Q. Okay. And during that time period that Mr. Evans took

1 the stand, do you remember whether or not Detective Callahan  
2 was in the courtroom?

3 A. My memory was that Callahan was in the courtroom.

4 Q. And do you remember specifically what it was that  
5 Mr. Beauchesne asked Mr. Evans? Do you have a specific  
6 memory of that?

7 A. No.

8 MS. SCAPICCHIO: May I approach the witness, your  
9 Honor?

10 THE COURT: Yes, you may.

11 Q. This is page 202, October 4th, 1989, line 12. Can you  
12 read lines 12 through 24 to yourself, please. You read  
13 quicker than I expected. Sorry.

14 MS. SCAPICCHIO: May I approach the witness, your  
15 Honor?

16 THE COURT: Yes, you may.

17 Q. Attorney George, having read --

18 THE COURT: Wait, wait, Mr. Reilly's waving at  
19 you.

20 MS. SCAPICCHIO: Your Honor, may I have document  
21 camera 1, please.

22 THE COURT: Okay, it's okay.

23 Q. We can start at line 12. Is that Mr. Beauchesne  
24 speaking? "All right. Notwithstanding the fact that half  
25 of these on the list you don't believe are yours?"

1 MR. ROACHE: Your Honor, I object to the form of  
2 the question. Mr. George was asked, "Does he have a  
3 memory?" And I think the document was produced to see if  
4 the document refreshes Mr. George's memory.

5 MS. SCAPICCHIO: It's a stipulated exhibit.

6 THE COURT: It's a stipulated exhibit, what went  
7 on at the trial is part of the operative facts in the  
8 case.

9 MR. ROACHE: Thank you, your Honor.

10 MS. SCAPICCHIO: Thank you.

11 Q. Attorney George, if I can again direct your attention to  
12 line 12, this is Mr. Beauchesne speaking with the witness,  
13 Ricky Evans on the stand: "All right. Notwithstanding the  
14 fact that half of these on the list you don't believe are  
15 yours, have you had any conversations with me concerning my  
16 office doing anything for you on any of these cases? What  
17 do you recall Mr. Evans' answer being?

18 A. No.

19 Q. Okay. Do you remember the next question Mr. Beauchesne  
20 asks, Assistant District Attorney Beauchesne, "Have you  
21 talked with any police officer concerning anyone doing  
22 anything for you?" What was Mr. Evans' answer at that voir  
23 dire?

24 A. "No."

25 Q. "Do you think as you sit here right now that because you

1     testify you're going to get any special break on any of  
2     these cases?" What do you recall Mr. Evans answer being  
3     back then?

4     A. "No."

5     Q. And do you remember -- if you could switch to page 204.  
6     Do you remember in that same voir dire, Attorney George,  
7     Assistant D.A. Phil Beauchesne asking Mr. Evans, "Now with  
8     regard to those cases that you say you've been charged with,  
9     have you been convicted of any of them?" What was his  
10    answer?

11    A. "No."

12    Q. "And as you sit here today, do you think you're going to  
13    get a break because you testified?" What was his answer?

14    A. "No."

15    Q. "Are you testifying --" this is Assistant D.A. Phil  
16    Beauchesne, "Are you testifying because you think you're  
17    going to get a break?" The answer?

18    A. "No."

19    Q. That testimony that I just refreshed your memory with,  
20    does that refresh your memory as to whether or not -- well,  
21    let me ask you this. The testimony that we just heard, does  
22    that coincide with your memory that you didn't receive any  
23    information from anyone regarding promises made to  
24    Ricky Evans about pending cases?

25    A. Well, that confirms it. I didn't get it.

1 Q. Okay. And with respect to this voir dire, do you then  
2 remember that Mr. Evans took the stand?

3 A. Yes.

4 Q. And this is page 220. Do you see that on your screen  
5 right in front of you, Attorney George?

6 A. Yes.

7 Q. And if I represent to you this was your  
8 cross-examination of Mr. Evans at trial, do you remember as  
9 you sit there, do you see at line 7, "Now, did you ever have  
10 any discussions with anyone, any police officers regarding  
11 these open cases against you?" What was Mr. Evans' answer  
12 at trial?

13 A. "No."

14 Q. Was Detective Callahan there during that testimony?

15 A. My memory is Detective Callahan sat at the table  
16 throughout the trial with Phil Beauchesne.

17 Q. Okay. And do you see the next question, "Well, are you  
18 sure about that, Rick, Mr. Evans?" And what do you recall  
19 Mr. Evans' testimony being?

20 A. He said, you know, he was playing on me with what I was  
21 talking about. He wanted to know which cases I was talking  
22 about. He was splitting hairs.

23 Q. Okay. And if you go down to line 15, the question you  
24 asked him, "Now, have you had any discussions about your  
25 pending cases?" What's Mr. Evans' answer then at line 17?

1 A. Well, he said, "My pending cases?" He was acting like  
2 he didn't know what I was talking about.

3 Q. And you were questioning him with anybody, in line 20,  
4 "With anybody before you took the stand." What was  
5 Mr. Evans' answer back in 1989? Can you read that?

6 A. "I must have discussed it one time with Sergeant  
7 Callahan about."

8 Q. And you asked Sergeant Timothy Callahan?

9 A. I can't see the top of it, but I'm guessing that's what  
10 it says. There you go. Your hand is over it. Now I see  
11 it.

12 Q. Okay. Then if you turn the page to 221, if you look at  
13 the top of the page, your next question is, "Sitting right  
14 there next to the prosecutor?" What did you mean by that,  
15 Attorney George?

16 A. Well, not that my memory is that good, the witness stand  
17 was almost where I am now, it was to the right or the left  
18 of the bench. The table would have been right where the  
19 clerk is sitting here or just in front of it. I was  
20 pointing at the table. I was probably standing in front of  
21 the bench pointing at the table, Detective Callahan sitting  
22 right here. My finger was probably five feet from Detective  
23 Callahan at that point.

24 Q. Does that help confirm your memory that Detective  
25 Callahan was in the courtroom during Mr. Evans' testimony?



1 A. Yes.

2 Q. And with respect to the next question, do you remember  
3 asking Ricky Evans what he talked to Detective Callahan  
4 about?

5 A. Yes.

6 Q. And what was Mr. Evans' response back in 1989?

7 A. Evans said, "I just asked him if he'd help me with my  
8 warrants."

9 Q. And back in 1989 before you tried the case, you knew or  
10 did you know that Ricky Evans had received some help with  
11 his warrants prior to taking the witness stand?

12 A. Yes.

13 Q. And in your experience as a criminal defense attorney,  
14 was that common practice that a witness who had outstanding  
15 warrants would be cleared up before they came in to  
16 testify?

17 A. Yes.

18 Q. Okay. But with respect to any promises about pending  
19 matters, do you remember that Mr. Evans had six or seven or  
20 eight pending matters at the time he testified in 1989?

21 MR. CURRAN: Objection.

22 THE COURT: Overruled.

23 A. I just remember Evans had a substantial criminal  
24 record.

25 Q. Okay. And --

1 A. Substantial means a long criminal record.

2 Q. And based on the voir dire that you participated in and  
3 the testimony at trial of Mr. Evans, did you have any reason  
4 to believe that Detective Callahan had made promises to  
5 Mr. Evans regarding assistance on his pending cases?

6 A. It didn't surprise me that warrants had been cleared up,  
7 so I knew that, but, you know, as to anything else beyond  
8 that, I didn't know anything else.

9 Q. And had you known that Detective Callahan had made  
10 promises to Mr. Evans about some assistance on his pending  
11 cases, would you have asked Mr. Evans about it?

12 A. You know, it depends on what kind of promises they were.  
13 I mean, if they were, you know, propositions to get cases  
14 dismissed or to drop cases where someone was looking at big  
15 jail time, of course it's something you'd ask Ricky Evans  
16 about.

17 Q. If it was promises to speak to the district attorney on  
18 your behalf and speak to the Court on your behalf some time  
19 after Mr. Evans testified in the case of Commonwealth vs.  
20 Shawn Drumgold and Terrance Taylor, would you have asked  
21 Mr. Evans about that at trial?

22 A. Yes.

23 Q. And if you had known about Mr. Evans staying at the  
24 Howard Johnson's, would you have asked him about that at  
25 trial?

1 A. Yes.

2 Q. If you had known about Mr. Evans charging meals to his  
3 hotel room, would you have asked him about that at trial?

4 A. Yes.

5 Q. If you had known that Mr. Evans was inviting friends to  
6 the hotel room to treat them to dinners, would you have  
7 asked him about that at trial?

8 MR. CURRAN: Objection.

9 THE COURT: Overruled.

10 A. Yes.

11 Q. If you had known that Mr. Evans was inviting family  
12 members to treat them to meals at the Howard Johnson's,  
13 would you have asked him about that at trial?

14 A. Yes, I would have.

15 Q. Now, prior to the time that you tried the case of  
16 Commonwealth vs. Shawn Drumgold and Terrance Taylor, did you  
17 learn that Detective Callahan had paid Ricky Evans any money  
18 at all?

19 A. No.

20 Q. And if you had learned that Detective Callahan had paid  
21 Ricky Evans money, would you have asked him questions about  
22 that at trial?

23 A. Yes.

24 MS. SCAPICCHIO: Can I just have a minute, your  
25 Honor.

1 Q. After Mr. Evans made those representations and after  
2 Phil Beauchesne, Assistant D.A. Phil Beauchesne, made  
3 representations that there were no promises made to his  
4 office or to the best of his knowledge any police officer,  
5 did Detective Callahan ever come up to you and say anything  
6 to you about promises he made to Mr. Evans?

7 MS. HARRIS: Objection.

8 THE COURT: Overruled.

9 A. No.

10 Q. Did Detective Callahan ever come up to you and make any  
11 statements to you over promises he made to Ricky Evans?

12 A. No.

13 Q. Did you ever find out from Detective Callahan that he  
14 had told, promised Ricky Evans that he would speak to the  
15 prosecutor and the Court on his behalf on his pending  
16 cases?

17 MS. HARRIS: Objection.

18 THE COURT: Overruled.

19 A. No.

20 Q. Did you ever find out Detective Callahan gave as far as  
21 he admits \$20 to Ricky Evans?

22 A. No.

23 Q. Did you ever find out that Detective Callahan brought  
24 Ricky Evans to the Howard Johnson's and allowed him to stay  
25 there for a period of time?

1 A. No.

2 Q. And Detective Callahan never came and told you any of  
3 those things after that testimony in court; is that right?

4 MS. HARRIS: Objection.

5 A. No, he did not.

6 THE COURT: Overruled. Go on.

7 MS. SCAPICCHIO: I have nothing further. Hold on  
8 one second.

9 Q. One more, sorry. Did you learn during the course of  
10 your representation of Terrance Taylor that  
11 Detective Callahan was feeding the details of the crime to  
12 Mr. Evans so that he could testify at trial?

13 A. No.

14 Q. If you had learned that, would you have asked him about  
15 that at trial?

16 A. Yes.

17 Q. And how important would that information have been to  
18 your cross-examination of Mr. Evans at trial?

19 A. Well, if a person's tailoring their story with evidence  
20 being fed to them by the police about the version of events  
21 the police wanted them to, you know, to give to the jury,  
22 it's something you'd beat them over the head with.

23 Q. When you say beat them over the head with it, Attorney  
24 George, what do you mean?

25 A. You would use it to try to demonstrate to the jury that

1 Evans was lying about what he knew or about what he said he  
2 knew.

3 MS. SCAPICCHIO: I don't have anything further.  
4 Sorry.

5 MR. CURRAN: May I, your Honor?

6 THE COURT: Yes, of course. Your assistant can  
7 help you at any time.

8 MR. CURRAN: Thank you, your Honor.

9 THE COURT: Mr. George, you're not going to hear  
10 the end of that one, but go on.

11 MS. SCAPICCHIO: From me either.

12 MR. CURRAN: For the record, I'm her assistant,  
13 your Honor, any day of the week.

14 CROSS-EXAMINATION

15 BY MR. CURRAN:

16 Q. Good morning, Mr. George.

17 A. Good morning.

18 Q. How many years have you been a practicing attorney?

19 A. About 30 years.

20 Q. And --

21 A. Actually 28 years.

22 Q. And you look pretty good for 28 years.

23 A. Flattery will get you everywhere.

24 Q. Mr. George, prior to being a criminal defense attorney  
25 in Massachusetts, you practiced law before that, correct?

1 A. Yes.

2 Q. Okay. And you practiced law as an assistant district  
3 attorney in Norfolk County?

4 A. Yes, I did.

5 Q. And you prosecuted homicide cases?

6 A. Yes.

7 Q. Okay. And you worked in Norfolk County from 1980 to  
8 1982?

9 A. Yes, I did.

10 Q. And you then went on for the past 28 years handling  
11 criminal cases in state and federal courts, correct?

12 A. Yes.

13 Q. And you prosecuted numerous homicide cases?

14 A. I've defended numerous homicide cases.

15 Q. Okay. You've also prosecuted your fair share of  
16 homicide cases?

17 A. Yes, way more defense.

18 Q. All right. When you defended Terrance Taylor, you got  
19 appointed to represent Terrance Taylor in August of 1988,  
20 correct?

21 A. Yes, sir.

22 Q. And the trial took place in October of 1989; is that  
23 right?

24 A. Yes.

25 Q. And during the course of that period of time, you

1 enlisted associates to work with to help you on this case?

2 A. Yes, I did.

3 Q. And you enlisted investigators to help you on this  
4 case?

5 A. Yes.

6 Q. All right. Is it fair to say when you got discovery,  
7 you took notes?

8 A. I don't want to say I don't recall but, you know, did I  
9 take notes, no. No, I don't recall taking notes, I should  
10 say.

11 Q. Well, is it fair to say that if you had a conversation  
12 with Phil Beauchesne, the trial prosecutor, and he provided  
13 you information that was not contained in a report, you  
14 would have taken notes of that conversation?

15 A. Yes.

16 Q. Okay. And, in addition, if you had an opportunity to  
17 speak with any of the police officers that responded to the  
18 scene of the crime, any detectives or homicide detectives,  
19 if you had a conversation with them about their role in the  
20 investigation, the murder of Tiffany Moore, you would have  
21 taken notes?

22 A. You know, I would take notes if it was important for me  
23 to write something down that I thought I'd forget. I take a  
24 lot more notes now than I used to.

25 Q. Now, is it also fair to say that if you're in this case



1 that the joint witness list between the Commonwealth and the  
2 defendants in the case was in excess of 100 witnesses?

3 A. There were a lot of witnesses on the joint witness list  
4 in this case.

5 Q. Okay. In regards to the discovery that was provided,  
6 you had in excess of 60 reports or transcribed statements,  
7 correct, provided by the police department?

8 A. You know, Mr. Curran, I don't remember. I remember in  
9 this case it was a very, you know, it was a high profile  
10 case at the time. I don't recall how much discovery there  
11 was. There was a substantial amount of discovery, I just  
12 don't remember how many statements were provided or not.

13 Q. Okay. And is it fair to say that in the discovery you  
14 would isolate potential witnesses that had either  
15 exculpatory evidence or inculpatory evidence in regards to  
16 Terrance Taylor?

17 A. I don't want to knit-pick with you, but your definition  
18 of isolate might be different than mine. Did I take them  
19 and put them in a separate folder, did I take them and put a  
20 little star on top?

21 Q. That's not my definition. You read the discovery to  
22 identify witnesses that could either hurt or harm your  
23 client?

24 A. Yes.

25 Q. Okay. As a result, you wanted your investigators out

1       there interviewing those witnesses?

2       A.   I would want my investigators out interviewing witnesses  
3       that helped me quicker than I would want them out there to  
4       talk to witnesses I thought were hostile.

5       Q.   Okay.  But, in any event, you would want your  
6       investigators to go out there and interview witnesses and  
7       report back to you what they were saying?

8       A.   Yes.

9       Q.   All right.  And your investigators would write  
10      reports?

11      A.   Well, I don't know about that.

12      Q.   Okay.  Did you use your investigator, Joe Guiditti, in  
13      this case?

14      A.   Yes.

15      Q.   And did you use Daniel Fitzgerald?

16      A.   Yes.

17      Q.   And did you use Lawrence Fallon?

18      A.   Yes.  Fallon worked in conjunction with Danny  
19      Fitzgerald.

20      Q.   Both of them were in law school at the time?

21      A.   Yes, they were.

22      Q.   Very eager to assist you?

23      A.   Yes.

24      Q.   And they wrote reports and they gave them to you,  
25      correct?

1 A. I can't say that they wrote reports and gave them to  
2 me.

3 Q. Do you have any memory of any report being written by  
4 your investigator?

5 A. I have no memory today of any reports being written and  
6 given to me.

7 Q. Did they not write reports?

8 A. Well, you know, I don't want to make this into Criminal  
9 Law 101, you don't always ask for reports, you know,  
10 immediately when people are out, you know, investigating  
11 your cases. If you want a report, you demand a report or  
12 request one, you usually get one. I can't recall whether I  
13 was asking for reports to be brought back to me in written  
14 form every time they talked to somebody.

15 Q. Do you recall the first group of discovery provided you  
16 by Phil Beauchesne?

17 A. No.

18 Q. Okay. Well, let's move back, Mr. George. Could you  
19 describe to the jury after a police officer applies for a  
20 warrant for the arrest of someone on a capital case, a  
21 murder case, and they've been arrested, could you describe  
22 for the jury what the process is, what the criminal process  
23 is, where they're arraigned and what takes place?

24 A. After someone is arrested on a case, they're brought --  
25 they haven't been indicted yet, which is the grand jury.

1 They're brought into the local district court where they're  
2 charged, and they're arraigned before a District Court  
3 Judge, which in the state court system is the lower court,  
4 it's the community court.

5 Q. Okay.

6 A. Then they're arraigned and they plead not guilty, and if  
7 it's a serious charge, like homicide, you argue bail, and  
8 most times on that type of charge someone is held without  
9 bail.

10 Q. Okay. Now, Mr. George, not to interrupt you, to  
11 streamline a little, at some point the Commonwealth presents  
12 witnesses to the grand jury for citizens of Suffolk County  
13 to determine if there's probable cause to indict someone and  
14 charge them with murder, correct?

15 MS. SCAPICCHIO: Objection.

16 THE COURT: Overruled.

17 A. At some point the grand jury's convened to hear whatever  
18 evidence the Commonwealth puts to it.

19 Q. Okay. And they return either a no bill or a true bill,  
20 correct?

21 A. Which in lay talk, they either indict you or they  
22 don't.

23 Q. And if you are indicted, you are then arraigned in  
24 Superior Court again, correct?

25 A. Yes, they're rearraigned in Supreme Court. You go

1 through the bail process all over again.

2 Q. And after the arraignment, is the case continued for a  
3 pretrial conference date?

4 A. Yes.

5 Q. Can you explain what the purposes of the pretrial  
6 conference date is.

7 A. Pretrial conference is when you come back to court and  
8 you sit down, if you haven't already with the prosecutor,  
9 and you try to work out the details, you try to open the  
10 avenues of communication in terms of evidence going back and  
11 forth, what motions are going to be filed, what documents  
12 they're going to give you without a fight.

13 When you say without a fight, without going to the  
14 Court and asking the Court to order them to give it to you,  
15 and you set a series of dates what's going to happen next  
16 time you're in court.

17 Q. And, in fact, the pretrial conference date, some initial  
18 discovery is provided?

19 A. Today it is. Back in those days, you would go to court  
20 and you would just fill out -- you'd fill out a form, but  
21 you didn't necessarily get anything at a pretrial conference  
22 date. Today you do, but back then you didn't.

23 Q. Could you describe what the discovery process was like  
24 back in 1988 and 1989.

25 A. Today the rules are much stricter in terms of

1 prosecutors, discovery as well as defense discovery. Now  
2 dates are set and, you know, there are time standards within  
3 which things have to be provided. The federal court is a  
4 lot stricter than the state court, but back then you'd make  
5 agreements, you'd shake hands and things were provided back  
6 and forth, but everything was documented.

7 Q. Okay.

8 A. And the reason you had to document it because if you  
9 didn't get something, you would let the Court know you  
10 didn't get something. No one took your word for it.

11 Q. Okay. Do you recall being deposed in this case?

12 A. Yes.

13 Q. Okay. Do you recall describing the discovery process in  
14 1988 and 1989 as extremely sloppy?

15 A. Yes, it was sloppy.

16 Q. Why don't you describe what you meant by sloppy.

17 A. Similar to what I just said, much less formal than it is  
18 today.

19 Q. Okay.

20 A. You know, you'd do things on an agreement, you'd talk in  
21 a hallway. I don't want it to seem like it was the frontier  
22 or anything, it was today things are documented, computers  
23 are used, docketing systems are on computer screens. Back  
24 then we weren't even using -- we were barely using computers  
25 back then. People typed you the letter, they would actually

1 type you the letter, and you would make an agreement to do  
2 something and, you know, it would either happen or not  
3 happen. It's different than it is now.

4 Q. Do you recall using the language cover letters were  
5 never, as I recall, would never detail out everything that  
6 was included in the envelope?

7 A. Yes, I do remember that.

8 Q. And, in fact, when you would get the envelopes in 1988  
9 or 1989, they're in disarray, documents were out of order,  
10 correct?

11 A. Yes.

12 Q. Missing pages?

13 A. Sometimes.

14 Q. Okay.

15 A. The tech. was a lot different back then. When a person  
16 like Phil Beauchesne would send you a letter, his secretary  
17 would be sitting there typing the entire letter out instead  
18 of cutting and pasting it on a computer screen and make it  
19 happen much faster, so it was very rare to see everything  
20 listed out number by number. You could come on up.

21 THE WITNESS: I'm sorry.

22 MR. CURRAN: May I approach, your Honor?

23 THE COURT: Yes, you may.

24 Q. It's the October 18th, 1988 letter. Mr. George, I have  
25 to get permission from her Honor to walk up, but thank you

1       anyway.

2                       THE COURT:   You do.

3       Q.   Mr. George, I'm going to show you these two letters.   I  
4       submit to you that they're identical.

5       A.   Okay.

6       Q.   One is addressed to you, one is addressed to  
7       Mr. Rappaport?

8       A.   All right.

9       Q.   I'd ask you to take a quick look at those.

10      A.   I've looked at it.

11      Q.   Do you recall this correspondence sent by  
12      Phil Beauchesne to you on October 19th, 1988?

13      A.   I mean, do I specifically recall it, no, but, I mean, I  
14      recognize it as something that was sent to me back then.

15      Q.   Okay.   Prior to you coming today, have you had a chance  
16      to review any of these documents that were provided to you  
17      during the course of discovery by the Commonwealth?

18      A.   No.

19      Q.   Okay.   You weren't able to review the grand jury  
20      minutes?

21      A.   No.

22      Q.   You weren't able to review the crime lab report?

23      A.   I wasn't able to review anything that's listed on this  
24      sheet.

25      Q.   Okay.   25 items of discovery, separate items relative to



1     what was given to you in October of 1988, correct?

2     A.   That's what the letter says, yes.

3     Q.   Okay.  There's 1, 2, 3, 4, 5, five transcribed recorded  
4     statements.  Did you have a chance to review them?

5     A.   I haven't reviewed anything that's in this letter to  
6     testify today.  I don't have the file.

7     Q.   Where's the file?

8     A.   The file was turned over to Terrance Taylor's attorney  
9     on other matters years ago.

10    Q.   Did you keep a copy?

11    A.   No, not that I recall, but, I mean, anything I had --  
12    anything I had -- I don't have a copy in my possession now.  
13    I don't recall if I ever turned a copy over to you or anyone  
14    else in regard to this litigation.

15    Q.   You think you turned a copy over to me?

16    A.   No, Mr. Curran, I don't, no, no, I don't know that.

17    Q.   Do you recall testifying at the deposition that you had  
18    some problems in your storage facility and the file may have  
19    been destroyed or you had a memory of turning it over to  
20    Terrance Taylor's family many years ago?

21    A.   That sounds familiar, yes.

22    Q.   And you have not had the opportunity to review any of  
23    these documents that were provided, correct?

24    A.   No, sir.

25    Q.   Have you reviewed the completed trial transcript?

1 A. No, you did provide me with the complete trial  
2 transcript, and I did not review it. It was about a year  
3 and a half ago.

4 Q. And you haven't had time to review the complete trial  
5 transcript since then?

6 A. No, sir.

7 Q. Now, Mr. George, where do the discovery obligations in  
8 Massachusetts begin with and end with in regards to the  
9 Commonwealth, the prosecutor?

10 A. You mean where does the duty arise from? Where does it  
11 come from?

12 Q. Whose duty is it?

13 A. The prosecution -- it's the prosecution's duty to  
14 provide you discovery based on the rules of criminal  
15 procedure.

16 Q. Correct. The police department and any investigators in  
17 the D.A.'s Office that may investigate a crime would provide  
18 reports of discovery, correct?

19 A. Yes.

20 Q. And it's ultimately the filter, so to speak, for  
21 discovery obligations as the prosecutor, correct?

22 A. The person that would answer for it all is the  
23 prosecutor.

24 Q. Okay. It's the prosecutor's obligation to make a  
25 determination if something is exculpatory evidence or not?

1 A. Yes.

2 Q. And it's their decision whether to turn over certain  
3 information, correct?

4 A. Yes.

5 MR. CURRAN: May I just have a moment, your Honor?

6 THE COURT: Yes.

7 MR. CURRAN: May I approach, your Honor?

8 THE COURT: Yes.

9 Q. Mr. George, I'm just going to ask you for the record  
10 this is a letter dated October 23d, 1989 addressed to you  
11 signed by Phil Beauchesne.

12 A. Okay.

13 Q. All right. Have you had a chance to review that  
14 information?

15 A. Yes. Yes. Yes.

16 Q. Now, for the record, there's 14 items of discovery that  
17 were provided on that day by Mr. Beauchesne to you,  
18 correct?

19 A. Yes.

20 Q. All right. Is Ricky Evans' name in any of those  
21 discovery letters?

22 A. No. No.

23 Q. Okay. In fact, Mr. Beauchesne, do you recall  
24 Mr. Beauchesne providing you with a transcribed statement  
25 and a copy of Ricky Evans' interview?

1 A. I'm not saying he didn't. I don't recall.

2 Q. You don't recall whether or not you were provided  
3 that?

4 A. Yes, sir.

5 Q. Okay.

6 A. Yes, sir, I don't recall.

7 Q. All right. Do you recall whether or not you had the  
8 opportunity to listen to the tape, Ricky Evans' tape prior  
9 to the trial?

10 A. Not that you're looking for answers that you're not -- I  
11 mean, if I had gotten such a tape, I would have listened to  
12 it, but I don't have a memory today of listening to the  
13 tape.

14 Q. Okay. Do you recall receiving a report of an interview  
15 of Ricky Evans when he was brought to the D.A.'s Office on  
16 June 21st, 1989?

17 A. I don't recall today whether or not I saw such a thing,  
18 but if you put it here in front of me, I'll look at it. I  
19 just don't remember --

20 Q. Okay.

21 A. -- seeing that document.

22 Q. Okay. Now --

23 A. And I'm not saying I didn't see it, I'm just saying I  
24 don't remember today whether I saw it.

25 Q. Now, were there times in Suffolk County in the D.A.'s

1 Office when you wouldn't get a cover sheet that detailed the  
2 discovery and provided you with reports back in 1988 and  
3 1989?

4 A. On homicide cases, you would usually get a cover sheet  
5 with your discovery, it's just, you know, some were better  
6 than others, that's all. Some cover sheets were better than  
7 others.

8 Q. Do you recall getting any information from  
9 Phil Beauchesne that was not contained in a cover letter,  
10 correspondence regarding discovery obligations?

11 A. I cannot say whether Phil Beauchesne, you know, wrote a  
12 cover letter every time he gave me discovery, but I agree  
13 those two letters you've just shown me are letters that came  
14 from Phil Beauchesne to me listing out 39 different pieces  
15 of discovery. I can tell you this, there was way more than  
16 39 separate pieces of discovery in this case.

17 Q. Correct, okay. Thank you, Mr. George. Now, do you  
18 recall any of the transcribed statements in the August 23d,  
19 1989 disclosures that you just reviewed?

20 A. No.

21 Q. Let me help you. Do you recall transcribed statements  
22 of Cherry Walker?

23 A. No, I don't, sir.

24 Q. Do you recall the transcribed statement of  
25 Lisa Graham?

1 A. No, I don't, sir.

2 Q. Do you recall a transcribed statement of  
3 Vantrell McPherson?

4 MS. SCAPICCHIO: Objection.

5 THE COURT: Overruled.

6 A. The names are familiar, but I don't recall the  
7 transcribed statements or the contents.

8 Q. Do you recall the transcribed statement of Michelle  
9 Royston?

10 A. No.

11 Q. Tanoi Curry?

12 A. No.

13 Q. Shamia Clemons?

14 A. No.

15 Q. Michelle Blalock?

16 A. No.

17 Q. Mr. George, what was your relationship with  
18 Phil Beauchesne?

19 A. We had a very -- you know, we were friendly. I mean,  
20 did we have beers together, no, but I respected  
21 Phil Beauchesne and I liked him.

22 Q. Okay.

23 A. By the way, I like Phil Beauchesne and I respect him. I  
24 don't want you to think he's not with us.

25 Q. That's not what we're trying to do, Mr. George.

1 A. Yes.

2 Q. In regards to Paul Connolly, do you know the name  
3 Paul Connolly?

4 A. Yes.

5 Q. Okay. How do you know Paul Connolly?

6 A. I know who Paul Connolly was, and I had dealt with him  
7 in the past but it wasn't as close a relationship or as  
8 respectful a relationship as with Phil Beauchesne.

9 Q. Did you deal with Paul Connolly when he was a criminal  
10 defense lawyer?

11 A. I barely remember that, but I remember dealing -- I  
12 remember Paul Connolly was a criminal defense attorney.

13 Q. Did you have any cases with him when he was a  
14 prosecutor?

15 A. Yes, I did.

16 Q. You had a professional and good relationship with  
17 Paul Connolly?

18 A. Yes, I didn't have a bad relationship with  
19 Paul Connolly.

20 Q. Okay. Now, have you had the opportunity to review the  
21 Treas Carter file?

22 A. No.

23 Q. Okay. Do you know what the Treas Carter file is?

24 A. No.

25 Q. Okay. Do you know that Treas Carter was indicted for

1 the execution, murder of Willie Evans and for shooting  
2 Ricky Evans on December 16th, 1988?

3 A. No.

4 Q. Do you recall that you actually cross-examined  
5 Ricky Evans, either you or Mr. Rappaport, that Mr. Evans was  
6 arrested at 118 Elm Hill Ave. two days before he was shot?

7 A. I don't have any specific memory of that right now,  
8 no.

9 Q. Okay. Now, do you recall being provided in discovery  
10 information regarding the murder of Willie Evans and the  
11 shooting of Ricky Evans?

12 A. I have no memory today of being provided that, no.

13 Q. Okay. And do you recall whether or not you  
14 cross-examined Ricky Evans relative to the shooting of his  
15 cousin and himself in that he was a witness for the  
16 Suffolk County D.A.'s Office in that murder case?

17 A. Was Treas his cousin?

18 Q. Yes.

19 A. I don't have a memory.

20 Q. Do you recall, let me maybe refresh the name Chilly?

21 A. Chilly?

22 Q. Yes. Do you recognize the name Chilly?

23 A. They're memorable names, but I don't remember Chilly.

24 Q. Now, who's in charge of all homicide investigations by  
25 law in the City of Boston?



1 A. Well, they all come through the district attorney's  
2 office.

3 Q. Do you know that there's a law in the statute that puts  
4 the Suffolk County D.A.'s Office in charge of all homicide  
5 investigations in Suffolk County, the City of Boston,  
6 Winthrop?

7 A. That would not surprise me, and I agree with that.

8 Q. Okay. Now, --

9 MR. CURRAN: Your Honor, this is an agreed upon  
10 exhibit. Could you bring up the photograph, Exhibit No. 6,  
11 Mr. Bailey. Thank you, your Honor.

12 MS. HARRIS: I'll help you.

13 Q. Mr. George, when you were assigned this case, at some  
14 point in time you went out and conducted a crime scene  
15 investigation, correct?

16 A. Yes.

17 Q. All right. And you were aware that the Boston Police  
18 Department responded to the shooting of Tiffany Moore at  
19 approximately 9:20 on the evening of August 19, 1988,  
20 correct?

21 A. I don't disagree with that.

22 Q. And, in fact, were you familiar with the Suffolk County  
23 D.A.'s Office having a homicide response team?

24 A. Yes.

25 Q. Okay. Could you tell the jury what the homicide

1 response team was.

2 A. Well, an assistant district attorney would carry a  
3 beeper, and when a homicide would occur or when -- I  
4 shouldn't say a homicide -- a sudden death would occur, a  
5 call would be made into that beeper and the assistant  
6 district attorney would respond to the scene of the homicide  
7 with an assigned Boston Police officer or detective.

8 Q. And in this particular case, are you familiar with an  
9 assistant district attorney by the name of Matthew King?

10 A. Yes.

11 Q. And did in fact Matthew King respond to the scene of the  
12 Tiffany Moore homicide on August 19, 1988?

13 A. My memory is that Matt King was involved in the case,  
14 and that doesn't -- that's something that refreshes my  
15 memory.

16 Q. Okay. If I told you that Matt King also participated in  
17 interviews with witnesses with Detective Richard Walsh into  
18 the late evening of August 19th and into the early morning  
19 of August 20th, does that refresh your memory?

20 A. I remember Matt King was involved in interviews.

21 Q. Now, at some point in time you had the opportunity to go  
22 out to the scene, correct?

23 A. Yes.

24 Q. And you went out to the scene with your investigators?

25 A. I remember being with Danny Fitzgerald. I don't know if

1 I was with anyone else.

2 MR. CURRAN: Mr. Bailey, if you could first bring  
3 up, and I apologize, bring up the map of the Humboldt and  
4 Homestead area.

5 Q. Okay. Mr. George, if you could just acquaint yourself  
6 with this particular area. You're familiar with that area  
7 of Grove Hall, correct, in the City of Boston?

8 A. Yes.

9 Q. And you're familiar with the fact that on the corner of  
10 Homestead and Humboldt Avenue that purple building is the  
11 Boston Edison plant?

12 A. I remember that now.

13 Q. And, in fact, the little dot here is where the mailboxes  
14 were, correct?

15 A. Yes.

16 Q. And the Boston Edison plant was encased by a fence,  
17 correct?

18 A. Yes.

19 Q. And at the time of the shooting of Tiffany Moore,  
20 Tiffany Moore was sitting on one of the mailboxes; is that  
21 correct?

22 A. Yes.

23 Q. And she was surrounded by other young girls and some  
24 older boys?

25 A. Yes.

1 Q. And one of those older boys included  
2 Christopher Chaney?

3 A. You're refreshing my memory now.

4 MS. SCAPICCHIO: Is there a question?

5 THE COURT: I'm waiting for a question. Go on.

6 Q. Do you recall Christopher Chaney was one of the boys  
7 that was standing next to Tiffany Moore at the mailbox?

8 A. Now that you mentioned it, yes.

9 Q. Do you acknowledge that the Commonwealth's theory of the  
10 case was that Chris Chaney and Mervin Reese were the  
11 intended targets that evening?

12 A. Yes.

13 Q. Okay. And that Mervin Reese had been at the mailbox  
14 within a half hour of the shooting of Tiffany Moore? Do you  
15 acknowledge that?

16 A. Yes.

17 Q. All right. And is it fair to say that the allegations  
18 of the witnesses were that there were two or three masked  
19 gunmen wearing black clothing and/or black Adidas  
20 sweatsuits, climbed over the fence at the back of the  
21 Edison, crept up along the building and fired shots at the  
22 intended targets striking Tiffany Moore?

23 A. That's my memory.

24 Q. Okay. And that after the shots were fired, depending on  
25 which witness how many shots there were, they ran back along

1 the building climbing over the fence and going up Homestead  
2 Street, correct?

3 A. I remember that, yes.

4 Q. And, in fact, there were two witnesses in this case,  
5 Tracie Peaks and Mary Alexander, that lived at 72 Homestead  
6 Street, the blue building, correct?

7 A. Yes.

8 Q. And do you recall during the trial that Tracie Peaks and  
9 Mary Alexander said after they heard shots fired, they went  
10 to the porch and they saw black males coming over the back  
11 of the fence and coming by their house, and one of them  
12 putting a gun in his waistband, correct?

13 A. I remember that, yes.

14 Q. All right. And let me move to the picture now, please.  
15 Sir, could you tell the jury what this picture is?

16 A. Those are the mailboxes you're talking about, and that's  
17 the front of the Edison plant, and that's the fence encasing  
18 the front of the Edison plant. We're on Humboldt, and  
19 Homestead is over to the left.

20 Q. All right. Can we move to the next exhibit, 7, please.  
21 And is this -- sir, could you explain what this photo is?

22 A. It's obvious, it's not obvious, that's the back -- I  
23 don't know what that is.

24 Q. Good answer. If I was going to give you an area, to the  
25 left of the photograph is Homestead Street, and we're

1 looking from the view of this picture is from Humboldt down  
2 Homestead?

3 A. Right, that's what -- yes.

4 Q. And the allegations were that the shooters ran down the  
5 side of this fence over the fence and down Homestead,  
6 correct?

7 A. Yes.

8 MR. CURRAN: Thank you, Mr. Bailey.

9 Q. Mr. George, when you went out that evening, when did you  
10 go out to the crime scene, how many times?

11 A. I was out there two or three times.

12 Q. And was that to get acclimated as a trial lawyer so you  
13 know the witnesses coming up, where they were when they made  
14 observations?

15 A. Yes.

16 Q. Okay. Did you go to the porch at 72 Homestead Street?

17 A. 72 Homestead Street where Mary Alexander and  
18 Tracie Peaks lived?

19 Q. Yes.

20 A. Yes.

21 Q. Did you go across the street to where Willie Simms on  
22 the third floor lived?

23 A. Yes.

24 Q. Okay. And he was another witness that was  
25 called -- well, strike that. Did you canvass the

1 neighborhood?

2 A. Not really.

3 Q. Okay. Did you have your investigators go knock on  
4 door?

5 A. They did, yes.

6 Q. Okay. Could you describe what the level of cooperation  
7 was with witnesses in this case when you were trying it?

8 A. There was no cooperation.

9 Q. Okay. Could you describe what the level of violence was  
10 in that area of the City of Boston back in 1988 and 1989?

11 A. Well, let's put it this way, you asked me if I went out  
12 there at night. I'd have to be crazy to go out there at  
13 night. It was the kind of place in the daytime it looked  
14 just fine, but at night it became a different place.

15 Q. Do you acknowledge in 1988 and 1989 there were record  
16 number of homicides and record number of shootings in the  
17 City of Boston?

18 A. Yes. It was a bad summer.

19 Q. Now, you testified on direct examination that your  
20 memory is that Tim Callahan second sat Phil Beauchesne  
21 throughout the course of the whole trial?

22 A. That's my memory.

23 Q. Okay. And your memory is that he was in the courtroom  
24 the whole time?

25 A. My memory is he was there throughout the course of the

1 time that I recall being in the courtroom, yeah, but, I  
2 mean, if you're asking me if he ever left the courtroom at  
3 any time, I wasn't watching him constantly, but he was there  
4 for almost all of the time I can recall.

5 Q. Do you remember Tim Callahan being away from the trial  
6 because he was a witness in another murder case and he was  
7 on the stand testifying in the same courthouse?

8 A. I don't recall that.

9 Q. Do you dispute that?

10 A. I don't dispute it, but I don't recall it.

11 Q. Okay.

12 A. I don't mean to interject, Mr. Curran, but I wasn't -- I  
13 wasn't there in the trial from the beginning to the end  
14 because at some point we were out of the trial. I don't  
15 know what happened after that.

16 Q. I understand that.

17 MR. CURRAN: Your Honor, may I approach?

18 THE COURT: Yes.

19 MR. CURRAN: This is unagreed upon, your Honor.

20 I'm just going to show the witness and have him review it by  
21 refreshing his memory.

22 Q. This is a trial transcript of October 5th, 1989, and I'd  
23 ask you to take a look at that page.

24 A. Okay.

25 Q. Okay. Does that refresh your memory that Detective



1 Timothy Callahan during the course of this trial went out to  
2 pick out defense witnesses to bring them into court to  
3 testify?

4 A. That's what that transcript says, yeah.

5 Q. Do you remember that?

6 A. I don't remember it, no.

7 Q. Was there a reason why you wouldn't send your own  
8 investigator out to pick up these witnesses?

9 A. There's a variety of different reasons. I could be busy  
10 with something else, an investigator could be doing other  
11 things for the defense at the same time, but if you're  
12 asking me if I have a specific memory as to why that  
13 happened as to what you just showed me, I have no specific  
14 memory of that.

15 Q. Is it common practice?

16 A. For the police to bring in --

17 Q. -- a defense witness?

18 A. Well, it is not common practice to bring in a defense  
19 witness, but it is common practice for the prosecution to  
20 bring in witnesses that are listed on their witness list or  
21 are joint witnesses that they don't call. That happens all  
22 the time.

23 Q. And that was referred to as defense witnesses?

24 A. The person was referred to as a defense witness.

25 Q. Thank you, Mr. George. Now, Mr. George, you practiced

1 in Suffolk County for 30 years, correct?

2 A. Yes.

3 Q. You've had all kinds of types of criminal cases in state  
4 and federal courts?

5 A. Yes.

6 Q. And you're familiar with Roxbury District Court?

7 A. Yes.

8 Q. Do you acknowledge that Roxbury District Court is one of  
9 the busiest municipality courts in New England?

10 MS. SCAPICCHIO: Objection.

11 THE COURT: Overruled.

12 A. They're a very busy court.

13 Q. Do you acknowledge in 1988 and 1989 that it was so busy  
14 that some trial dates were six months in the future?

15 A. That wouldn't surprise me.

16 Q. All right. Would you acknowledge that there was a -- do  
17 you acknowledge that certain types of cases that are  
18 arraigned or within a few appearances before the court that  
19 the court would try to dispose of those types of cases, less  
20 serious ones?

21 A. Yes, I mean, that occurs even today.

22 Q. Do you acknowledge that in Roxbury District Court in  
23 1988 a case like trespassing where you were living with a  
24 family member and you weren't on the loose that that type of  
25 case would be dismissed either outright or court costs?

1 A. I don't recall that, but that wouldn't surprise me.

2 Q. Okay. Disorderly person?

3 A. Same.

4 Q. Same, dismissed on court costs or community service,  
5 correct?

6 A. Same type of disposition.

7 Q. All right.

8 A. It wouldn't surprise me.

9 Q. How about straight possession of drugs?

10 A. Depends on the person's record.

11 Q. All right.

12 A. It would have depended on a person's record.

13 Q. And if you didn't have a record of convictions?

14 A. Even today it would be resolved quickly.

15 Q. Either dismissed on court costs or continued without a  
16 finding, correct?

17 A. Could you tell me what type of drugs?

18 Q. Possession of Class B?

19 A. Class B, okay, possibly, probably.

20 Q. Okay. And when you say -- could you explain what a  
21 continued without a finding is?

22 A. Continued without a finding is a matter is continued,  
23 you admit that you've committed the crime but the Court  
24 doesn't find you guilty, puts it off for a period of time,  
25 and if you have no trouble within that period of time, the

1 case is dismissed. It's like a pretrial probation.

2 Q. CWAFF on a docket sheet?

3 A. CWOFF.

4 Q. O-F, okay. And were you aware that when you  
5 cross-examined Ricky Evans -- strike that. The Commonwealth  
6 provided you information that the Boston Police Department  
7 brought Ricky Evans to the Roxbury District Court to have  
8 his pending cases default removed, correct?

9 A. Yes.

10 Q. That was a common practice by all the prosecutors in  
11 Suffolk Superior Court?

12 A. Well, resolving or removing defaults prior to the  
13 testimony would not be something out of the ordinary in  
14 Suffolk or in any county even today.

15 Q. Correct. You were provided that information which  
16 allowed you to cross-examine Ricky Evans on that, correct?

17 A. Yes.

18 Q. All right. The trial transcript, Detective McDonough  
19 brought Ricky Evans to have his default removed, correct?

20 A. Yes.

21 Q. In fact, there was a returnable warrant that was signed  
22 by Detective McDonough, correct?

23 A. Yes.

24 Q. And you used that returnable warrant to cross-examine  
25 Ricky Evans, right?

1 A. That's my memory, yes.

2 Q. Now, did you know what the relationship was like between  
3 Phil Beauchesne and Paul Connolly?

4 A. I know they weren't enemies, but I don't know whether  
5 they were hanging out together.

6 Q. They were colleagues?

7 A. They were professional colleagues.

8 Q. They had a professional relationship?

9 A. They had a professional relationship for certain, yes.

10 Q. You're aware that Phil Beauchesne and Paul Connolly were  
11 team leaders for different felony teams in Suffolk Superior  
12 Court at the time in 1988 and 1989?

13 A. I know that Phil Beauchesne was a team leader or a  
14 supervisor, but I don't recall if Paul Connolly was, but it  
15 wouldn't surprise me if he was.

16 Q. Do you remember that Phil Beauchesne and Paul Connolly  
17 had offices right next to each other on the fifth floor at  
18 55 Court Street?

19 A. I didn't know that.

20 Q. Did you go over to 55 Court Street to meet the  
21 prosecutors back then in 1988 and 1989?

22 A. Yes, I did.

23 Q. And they were on the fifth floor of the superior court  
24 prosecutors, correct?

25 A. I don't know remember where I got off the elevator, but

1 it was above the ground, you know, it was above the street  
2 level. I don't mean to be nit-picking, I just don't want  
3 to agree to the fifth floor if I don't remember.

4 Q. All the Superior Court prosecutors were on one floor?

5 A. Right, that's true, yes.

6 Q. And the district court prosecutors for the BMC and the  
7 other district court units were on the third floor?

8 A. They were on another floor.

9 Q. You don't want to commit to the third floor?

10 A. Well, I mean, you know, I'm just under oath.

11 Q. Okay. Now, Mr. George, as a seasoned criminal defense  
12 attorney when you were provided information that Ricky Evans  
13 was a common witness between Paul Connolly and  
14 Phil Beauchesne, you would take steps to investigate that,  
15 correct?

16 A. It depends what you mean by common witness. I mean, a  
17 witness for -- it depends what you mean in terms of how much  
18 I would investigate it.

19 Q. Okay. Well, do you acknowledge that  
20 Ricky Evans -- strike the question. Do you acknowledge that  
21 the initial investigation that took place, you had 15  
22 reports, transcribed statements, return of search warrant, a  
23 whole litany of information, correct?

24 A. Yes, sir.

25 Q. And you had no knowledge of Ricky Evans at that time?

1 A. No.

2 Q. Okay. In fact, some time in the summer of 1988,  
3 Ricky Evans was disclosed by Phil Beauchesne to you about  
4 being a witness in a case?

5 A. At some point prior to the trial he was disclosed, yes.  
6 The trial was in October of '89. That wouldn't surprise me  
7 that that's the date.

8 Q. Did Phil Beauchesne indicate to you that he had met with  
9 Ricky Evans and interviewed him?

10 A. I don't recall whether Phil Beauchesne said he had  
11 actually met with him, but, you know, he let us know about  
12 it, so I'm not going to assume anything. I don't recall  
13 Phil telling me he had met with him.

14 Q. Well, you had several cases with Phil Beauchesne,  
15 correct?

16 A. Yes.

17 Q. You considered him to be a very good prosecutor?

18 A. Yes.

19 Q. And you had a good relationship with him?

20 A. Yes, sir.

21 Q. Do you think that Phil Beauchesne would ever put a  
22 witness on the stand without interviewing him and preparing  
23 him to testify?

24 MS. SCAPICCHIO: Objection.

25 THE COURT: Objection sustained.

1 Q. Have you ever heard of any prosecutor in a homicide case  
2 putting a cooperating witness on the stand without ever  
3 interviewing him?

4 MS. SCAPICCHIO: Objection.

5 THE COURT: Sustained.

6 MR. CURRAN: Could I just have a moment, your  
7 Honor?

8 THE COURT: Yes.

9 MR. CURRAN: We have an agreed upon exhibit, your  
10 Honor, trial transcript, Day 6, October 4th, 1989, TR 00501.

11 THE COURT: On the document camera or on the  
12 screen?

13 MR. CURRAN: On the screen, please, your Honor, if  
14 I don't show my inadequacies on the document camera.

15 Q. I hit this too high. I just refer you to the question  
16 beginning where the arrow is.

17 A. Yes, sir.

18 Q. And the answer of Ricky Evans?

19 A. You've got it.

20 Q. "I have to go back the 8th of this month," correct?

21 A. Yes, sir.

22 Q. And he was referring to the 8th of October, 1989,  
23 correct?

24 A. Yes.

25 Q. And at that time you had done your due diligence and you



1 had gotten all of Mr. Evans' pending cases, correct?

2 A. Well, is this me asking the questions?

3 Q. What's that?

4 A. Did I ask these questions?

5 Q. Correct.

6 A. I mean, I was asking him generally about his defaults,  
7 but I don't know if I knew he had to go on the 8th of that  
8 month. I was taking his word for it.

9 Q. You cross-examined him on dealing drugs during the  
10 course of the trial?

11 A. I think so.

12 Q. Okay. You cross-examined him on him being a gang  
13 member?

14 A. I don't recall.

15 Q. Did you cross-examine him on his brother being a member  
16 of the Humboldt gang?

17 A. I don't recall.

18 Q. Okay. Now, as a seasoned criminal defense attorney, if  
19 you're going to cross-examine someone on pending cases or on  
20 prior convictions, you get a copy of the complaint and the  
21 docket sheet, correct?

22 A. Yes.

23 Q. So, when you were cross-examining him, you knew that  
24 Ricky Evans had to go back to court to answer on charges in  
25 Roxbury District Court?

1 A. It would not surprise me if I had such evidence.

2 Q. So on that day when he testified, those cases in Roxbury  
3 District Court weren't wiped away, correct?

4 A. No, no.

5 Q. All right. And they didn't just disappear prior to that  
6 day?

7 A. No, the warrants, you know, his defaults had been  
8 cleared.

9 Q. Okay. Now, can an individual remove a default without  
10 going before a Judge, a clerk and being given a bail  
11 warning?

12 A. For a speeding ticket?

13 Q. No, I'm talking about for a criminal charge, you said  
14 possession of Class B, disorderly, trespassing?

15 A. The more the charge, the more difficult it is certainly  
16 without a Judge.

17 Q. Right. You're not going to be able to walk into the  
18 courthouse, talk to your probation officer and go on your  
19 way if you have defaults on a criminal case, correct?

20 A. I misunderstood. No, you can't, you can't.

21 Q. So you got to go before a Judge and a clerk calls the  
22 warrant and there's a bail argument or the Court releases  
23 you on your recognizance and says you are recognized to be  
24 here on October 8th, 1989 to answer on these charges?

25 A. The Court has to approve the removal of a default, I

1 don't just get it done. It's not just something that  
2 happens when you walk in the front door of a courthouse.

3 Q. Did you work with Steven Rappaport closely on this  
4 case?

5 A. I worked with Mr. Rappaport, Attorney Rappaport on this  
6 case, yes.

7 Q. There was no joint defense agreement, correct?

8 A. No, sir.

9 Q. And, in fact, you worked with Attorney -- you worked  
10 with the attorneys that worked with you and your  
11 investigators on behalf of Terrance Taylor, correct?

12 A. Yes.

13 Q. You didn't say divide the duties?

14 A. No, sir.

15 Q. If a witness was going to be called, you prepared for  
16 that witness, correct?

17 A. We worked for Taylor, and we prepared our case for  
18 Taylor.

19 Q. All right. You acknowledge that there was a big  
20 discrepancy in the evidence against Taylor vs. Drumgold?

21 A. As I said in the deposition, the case against  
22 Mr. Drumgold was different than the case against  
23 Mr. Taylor.

24 Q. The case against Drumgold was much stronger, wasn't  
25 it?

1 A. It was stronger than against Taylor.

2 Q. And, in fact, against Taylor there was no one that  
3 identified Terrance Taylor at the scene of the shooting or  
4 coming from the scene of the shooting, correct?

5 A. Not that I recall.

6 Q. All right. Do you recall Chris Cousins?

7 A. No. I mean, I recall his name, but I don't recall the  
8 content of his testimony.

9 Q. Okay. Do you recall that Chris Cousins was one of the  
10 key witnesses that you had to discredit on behalf of  
11 Terrance Taylor?

12 A. I had to discredit several witnesses to get to where we  
13 got to in the case, yes.

14 Q. And do you acknowledge that not one witness that was  
15 called at trial identified Terrance Taylor at the scene of  
16 the shooting coming over the fence or running down Homestead  
17 Street when he had a gun in his pocket?

18 A. My memory is that no one identified Taylor in that  
19 fashion, although there were people that identified him as  
20 having a weapon --

21 Q. Okay.

22 A. -- prior to.

23 Q. You acknowledge that there was two witnesses against  
24 Terrance Taylor, one, Chris Cousins that was at a hospital  
25 room where Romero Holliday who had been suffering from a

1 gunshot wound, and there was a talk of retribution and  
2 Chris Cousins identified Shawn Drumgold and Terrance Taylor  
3 as the individuals in that room talking about retribution?

4 MS. SCAPICCHIO: Objection. There were more than  
5 two witnesses.

6 A. I recall --

7 THE COURT: Sustained.

8 Q. Do you recall that testimony at trial?

9 THE COURT: Can you rephrase your question now in  
10 light of the objection?

11 Q. Do you recall that Chris Cousins testified at trial that  
12 he was in a hospital room visiting Romero Holliday when  
13 Shawn Drumgold and Terrance Taylor were present and that  
14 Shawn Drumgold and Terrance Taylor discussed with Romero  
15 Holliday retribution?

16 A. I recall that now.

17 Q. Okay. And that was one of the witnesses that you had to  
18 deal with on behalf of Terrance Taylor, correct?

19 A. Yes, sir.

20 Q. And the other witness was Ricky Evans who testified that  
21 he saw Shawn Drumgold and Terrance Taylor before the  
22 shooting and saw him after the shooting? Is that correct?

23 A. Yes, sir.

24 Q. Do you recall sending investigators out looking for  
25 Ricky Evans?

1 A. I don't recall it, but that doesn't surprise me. I  
2 don't recall that.

3 Q. Okay. He was one of the key witnesses against Terrance  
4 Taylor, correct?

5 A. Yes.

6 Q. Would it surprise yourself that as a seasoned criminal  
7 defense attorney that you would not have sent investigators  
8 out?

9 MS. SCAPICCHIO: Objection.

10 THE COURT: Sustained.

11 Q. Do you recall Lawrence Fallon who worked as an  
12 investigator for you?

13 A. Yes.

14 Q. Okay. And do you recall that --

15 MR. CURRAN: May I approach, your Honor?

16 THE COURT: Yes.

17 Q. Do you recall that Mr. Fallon was assigned the task of  
18 finding Ricky Evans?

19 A. Yes.

20 Q. I just ask that you review the September 12th, 1989  
21 report prepared by Detective Callahan. Okay. Does that  
22 refresh your memory?

23 A. It refreshes my memory that Larry Fallon, Lawrence  
24 Fallon, met with or went out looking for Ricky Evans.

25 Q. Does it refresh your memory that Ricky Evans claimed

1       that Lawrence Fallon asked him these series of questions?

2               MS. SCAPICCHIO:  Objection.

3       Q.  Did the police force you --

4               THE COURT:  Wait, the objection to -- are you  
5       reading from the trial transcript?

6               MS. SCAPICCHIO:  No.

7               MR. CURRAN:  This was discussed at the trial, your  
8       Honor, this is the September 12th -- may I approach?

9               THE COURT:  I don't want you to approach, just  
10      show it to me.

11              MS. SCAPICCHIO:  It's not part of the trial  
12      transcript, your Honor.

13              THE COURT:  Is this something that the witness  
14      indicated he had received?

15              MR. CURRAN:  I can prove that he received it,  
16      Judge.  There's discussions.

17              THE COURT:  Why don't you ask him whether or not  
18      he received it.  You can have it.

19      Q.  Do you recognize that document?

20      A.  I recognize it as a Boston police report.

21      Q.  Do you recognize that you at some point during the  
22      course of the discovery phase of this case received that  
23      document?

24      A.  I can't say I received it, but if it's part of the  
25      discovery packages that were going back and forth.  I don't

1 deny receiving it, I just don't have any specific memory of  
2 receiving any particular document.

3 Q. Do you recall various voir dires that were conducted  
4 regarding Ricky Evans and the disclosure of reports  
5 regarding Ricky Evans?

6 A. Yes.

7 THE COURT: This is during the trial?

8 MR. CURRAN: During the trial, your Honor.

9 MS. SCAPICCHIO: Pretrial hearings.

10 THE COURT: Pretrial hearings, okay.

11 Q. Do you recall this issue was brought up in a pretrial  
12 hearing relative to Ricky Evans and his testimony?

13 A. Yes.

14 Q. And it was discussed with you and Mr. Beauchesne and the  
15 Court about your investigator, Lawrence Fallon, finding  
16 Ricky Evans at his family home in Dorchester?

17 MS. SCAPICCHIO: Objection.

18 Q. His brother's home in Dorchester?

19 A. My memory there was a court proceeding about that  
20 issue.

21 Q. Okay. And, in effect, you spoke with Mr. Beauchesne  
22 about Ricky Evans' allegations about statements made by your  
23 investigator to him in regards to what he perceived,  
24 Ricky Evans perceived?

25 MS. SCAPICCHIO: Objection.



1 THE COURT: Can you rephrase that question?

2 MR. CURRAN: Sure.

3 THE COURT: It was a complicated question.

4 Q. You've had a chance to review the questions that were  
5 contained in this report that Ricky Evans alleges that your  
6 investigator asked him?

7 A. I wanted to make sure you said alleges, yes, I saw the  
8 report.

9 Q. And this is what Ricky Evans claimed Mr. Fallon said to  
10 him?

11 MS. SCAPICCHIO: Objection. It's what  
12 Mr. Callahan claims Mr. Evans said. It's not what Mr. Evans  
13 said. There's no evidence as to what Mr. Evans said.

14 THE COURT: Wait, has the witness identified the  
15 document as having been in his file?

16 MS. SCAPICCHIO: No.

17 Q. Do you recognize that document that I've just showed  
18 you?

19 A. I don't have a specific memory of any particular  
20 document that was in my file.

21 Q. Do you have any memory as you sit here today of any  
22 documents you had in your file?

23 A. No.

24 THE COURT: So if the document wasn't in his file,  
25 then the contents of the document you've just examined --

1 MR. CURRAN: He didn't say it wasn't in his  
2 file.

3 THE COURT: I understand. If you can't establish  
4 that it was in his file, and if the content -- you've just  
5 examined about the contents and you had his testimony. Go  
6 on.

7 MR. CURRAN: Can I just have a moment?

8 Q. In any event, Mr. Beauchesne approached you, correct,  
9 about it?

10 A. I remember taking up the subject of what you're asking  
11 me about with Mr. Beauchesne.

12 Q. Mr. Beauchesne came up to you and said we have a problem  
13 or to that effect there's some allegations that your  
14 investigator steered a witness?

15 A. I have a memory of Phil Beauchesne talking to me about  
16 Larry Fallon talking to a witness.

17 Q. And that was just a couple weeks before the trial?

18 A. I don't remember the timing of it. I'm remembering that  
19 it happened.

20 Q. Okay. The date of this report is September 12th, 1989.  
21 Do you recall at the pretrial that took place, that the  
22 original trial date for Shawn Drumgold and Terrance Taylor  
23 was September 12th?

24 A. No, I didn't. I don't recall that.

25 Q. Now, you indicated that you did not receive information

1 from Phil Beauchesne that Ricky Evans was in a hotel?

2 A. That's right, I didn't receive it.

3 Q. Okay. Did you receive it from Paul Connolly?

4 A. No.

5 Q. Well, do you acknowledge that Ricky Evans was a witness  
6 in the Treas Carter prosecution and also a witness in the  
7 Drumgold case?

8 A. I acknowledge that he was a witness in the Drumgold  
9 case, and I agree with you that he was a witness in another  
10 case, if you say so.

11 Q. Okay. Well, you cross-examined him on it, Mr. George.

12 A. Then we don't have to disagree with you, I agree with  
13 you.

14 Q. If you cross-examined Ricky Evans about it, is it fair  
15 to say that you would have taken steps as a criminal defense  
16 lawyer to speak to the prosecutor, Paul Connolly, in regards  
17 to what he had in the other murder case?

18 MS. SCAPICCHIO: Objection.

19 THE COURT: Overruled.

20 A. I can't say.

21 Q. Do you acknowledge that you would have asked the  
22 Commonwealth to provide discovery, incident reports, witness  
23 reports, transcribed statements in regards to the murder of  
24 Willie Evans and the prosecution of Treas Carter to see if  
25 there was any information that could help your client?

1 A. Yes.

2 Q. Okay. And do you have a memory of the Commonwealth  
3 providing you that information?

4 A. I don't have a memory of the Commonwealth providing  
5 that.

6 Q. All right.

7 A. But I'm not saying they didn't.

8 Q. All right. But as your practice would dictate that you  
9 would have sought out that information?

10 A. Yes.

11 Q. Okay. So you don't dispute that you had?

12 MS. SCAPICCHIO: Objection. That's not what he  
13 said.

14 THE COURT: Sustained. Sustained.

15 Q. As a seasoned criminal defense attorney, you would have  
16 also found out who was representing Treas Carter?

17 A. Yes.

18 Q. And you would have taken steps to speak to her to see  
19 what information she had in regards to a common witness, how  
20 we could help, get information on this witness so we can do  
21 our job?

22 MS. SCAPICCHIO: Objection.

23 THE COURT: Overruled.

24 A. That's something I should have, would have done.

25 Q. Okay. Do you recall Joan Stanley?

1 A. I know Joan Stanley.

2 Q. And you have a good relationship with Joan Stanley?

3 A. Yes.

4 Q. Joan Stanley represented Treas Carter, Chilly, who was  
5 being prosecuted for the murder of Willie Evans and the  
6 shooting of Ricky Evans. Do you have a memory of speaking  
7 to her?

8 A. I don't have a memory of speaking to Joan Stanley.

9 Q. And you had a good relationship with her back in 1988  
10 and 1989?

11 A. Yes.

12 MR. CURRAN: Can I just have a moment, your Honor.  
13 I don't have much more.

14 Q. Now, there was some questions asked about Theron Davis.

15 A. Yes.

16 Q. Okay. You acknowledge that one of the theories of the  
17 defense in this case was that Theron Davis was the  
18 shooter?

19 A. Yes.

20 Q. Okay. Do you acknowledge that the Commonwealth did not  
21 dispute that?

22 MS. SCAPICCHIO: Objection. I don't even know  
23 what that means.

24 THE COURT: I don't know what that means either,  
25 sustained.

1 Q. Do you acknowledge that Phil Beauchesne had provided you  
2 information that allowed you and your co-defense counsel,  
3 Mr. Rappaport, to develop your theory that Theron Davis was  
4 the shooter?

5 MS. SCAPICCHIO: Objection.

6 THE COURT: The question is about providing  
7 information. You can have it. Go on. Did you get such  
8 information?

9 THE WITNESS: My memory today is that it's not a  
10 mystery that Apple Davis or Theron Davis was the alleged  
11 shooter.

12 Q. Okay. You acknowledge that the witnesses said there  
13 were two to three shooters, correct?

14 A. My memory is that there were shooters in a vehicle on a  
15 drive-by shooting out of a vehicle.

16 Q. And that's what came out at trial?

17 A. I don't believe it came out at trial. I don't know.

18 Q. So, you're at trial, the trial witnesses that --

19 A. I just don't recall.

20 Q. The trial witnesses that were before 14 jurors in  
21 Suffolk County testified that there were two to three masked  
22 gunmen that climbed over the fence at the Edison plant,  
23 correct?

24 MS. SCAPICCHIO: Objection, your Honor. Can we be  
25 heard?

1           THE COURT: No. If the testimony is what was  
2 going on at trial, there will be transcripts to that extent.  
3 If the testimony is what was turned over, you can have it.  
4 The question is, was there anything turned over to this  
5 effect?

6           MS. SCAPICCHIO: Judge, the question that  
7 Mr. Curran is asking about witnesses who were called after  
8 Mr. George left the case.

9           THE COURT: Well, in that case the objection is  
10 sustained.

11          MR. CURRAN: That's not accurate. The trial  
12 transcript will show that, so that's fine.

13 Q. Mr. George, were you provided information that Theron  
14 Davis and London Williams were interviewed within a few days  
15 of the murder of Tiffany Moore?

16 A. That's not a surprise to me right now, but I don't have  
17 a specific memory of it.

18 Q. Okay. In fact, there was a report provided to you in  
19 discovery about the interview with Theron Davis, correct?

20 A. There likely was.

21 Q. And interview with London Williams?

22 A. The names are not unfamiliar to me.

23 Q. Do you acknowledge that Theron Davis' photograph was put  
24 in the array that was shown the identifying witnesses?

25          MS. SCAPICCHIO: Objection.

1           THE COURT: The issue is not whether it happened,  
2 the issue is whether he was told about it, whether or not  
3 that was something you were told about or received  
4 information in writing or orally.

5 A. I don't have a specific memory of individual pieces of  
6 evidence that were handed to me during discovery.

7 Q. You were provided the photo array, correct?

8 A. If there was a photo array, it would have been  
9 provided.

10 Q. Okay. And --

11 A. Or it should have been provided.

12 Q. All right. As a criminal defense lawyer, you'd want to  
13 know who was in the photo array, correct?

14 A. Yes.

15 Q. And you in 1988 knew what London Theron looked like?

16 A. I came to know what he looked like.

17 Q. So you had a chance to review a photo array with your  
18 knowledge with what Theron Davis looked like?

19 A. Yes.

20 Q. And do you recall that it was disclosed to you that  
21 Theron Davis was in the photo array that was shown the  
22 identifying witnesses?

23 MS. SCAPICCHIO: Objection. He just said he  
24 didn't recall what the photo array was.

25 THE COURT: Sustained. Sustained.



1 Q. Mr. George, based on the Treas Carter murder, you knew  
2 that there was three assailants that were involved in the  
3 murder of Willie Evans and the shooting of Ricky Evans?

4 MS. SCAPICCHIO: Objection, your Honor. He's  
5 already testified he doesn't remember the Treas Carter  
6 matter.

7 THE COURT: Sustained.

8 Q. Do you recall being provided information in the Treas  
9 Carter case that three gunmen took Ricky Evans and Willie  
10 Evans' cousin off the street and up into an apartment?

11 MS. SCAPICCHIO: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Do it this way, Mr. George, if the safety of a witness  
14 was an issue, would you cross-examine a witness if his  
15 safety and life were involved because of his cooperation and  
16 testimony in a criminal case?

17 MS. SCAPICCHIO: Objection, your Honor. That's  
18 not the evidence.

19 THE COURT: Sustained.

20 MR. CURRAN: May I be heard, your Honor?

21 THE COURT: No, go on.

22 MR. CURRAN: One minute, your Honor.

23 Q. You didn't find Ricky Evans a credible witness at trial,  
24 did you?

25 MS. SCAPICCHIO: Objection.

1 THE COURT: Sustained.

2 Q. Did you find Ricky Evans credible?

3 MS. SCAPICCHIO: Objection.

4 THE COURT: Sustained.

5 MR. CURRAN: May I approach the witness, your  
6 Honor?

7 THE COURT: Yes, you may.

8 Q. Deposition testimony, page 173.

9 MS. SCAPICCHIO: Judge, I'm going to object. This  
10 is the exact same question he just asked.

11 THE COURT: I don't have it in front of me what  
12 he's showing the witness.

13 MR. CURRAN: It's not the exact same question. If  
14 you'd like, I'll read the question out loud.

15 THE COURT: No, show it to me first.

16 MR. CURRAN: May I approach?

17 THE COURT: Yes. This is 173?

18 MR. CURRAN: Yes, your Honor.

19 THE COURT: You're showing this?

20 MR. CURRAN: Yes, your Honor.

21 THE COURT: Yes, you can have it.

22 MR. CURRAN: Thank you, your Honor.

23 Q. Prior sworn testimony, your Honor, I'd like him -- I'll  
24 read the question, you read the answer out loud, sir.

25 THE COURT: Are you representing that is

1 inconsistent with his testimony today?

2 MR. CURRAN: Yes, it is, your Honor.

3 MS. SCAPICCHIO: Judge, may we be heard?

4 THE COURT: You know what he's showing?

5 MS. SCAPICCHIO: I believe I do. It is the exact  
6 same question he asked.

7 THE COURT: No, it is not. Look at it now.

8 MS. SCAPICCHIO: Judge, I guess I don't know what  
9 it's inconsistent with. I thought he said he didn't know.

10 THE COURT: Go on.

11 Q. Question: "In regards to Ricky Evans, do you have any  
12 memory of it being disclosed to you that he was put up in a  
13 hotel for any period of time?" Answer?

14 A. "No."

15 Q. Do you have a memory that it was not disclosed to you or  
16 you just don't know?

17 A. I have no memory.

18 Q. Did you have someone second seating you?

19 A. I think so.

20 Q. Okay. Who was that?

21 A. I think it was Joe Balliro, Jr.

22 Q. Do you recall another attorney second seating  
23 Phil Beauchesne?

24 A. I don't remember.

25 Q. Do you know Jane Sullivan?

1 A. Yes, I do actually.

2 Q. Do you remember that Jane Sullivan second sat  
3 Phil Beauchesne?

4 MS. SCAPICCHIO: Objection, your Honor. It's not  
5 true.

6 MR. CURRAN: It is true.

7 THE COURT: That's not an objection. If the  
8 witnessed can adopt it, and that's the question, then it  
9 becomes truth for this case, so the objection is overruled.  
10 Go on.

11 A. I don't recall whether Jane Sullivan sat in the  
12 courtroom, well, second chair in the case or third chair in  
13 the case.

14 Q. Do you recall Phyllis Broker assisting  
15 Phil Beauchesne?

16 A. No, I don't have any specific recollection of Phyllis  
17 Broker assisting Phil Beauchesne.

18 Q. Do you recall any other witnesses? Do you recall Travis  
19 Johnson testifying at trial?

20 A. I don't recall. The name sounds familiar, but I don't  
21 recall him testifying at trial.

22 Q. Okay. Do you recall cross-examining Travis Johnson as a  
23 witness in the trial?

24 MS. SCAPICCHIO: Objection, your Honor.

25 THE COURT: Overruled.

1 A. No.

2 Q. Okay.

3 MR. CURRAN: Your Honor, could I bring up the  
4 agreed upon trial transcript, Trial Day 5, October 3rd,  
5 1989?

6 THE COURT: Attorney 2, go on.

7 MR. CURRAN: It's transcript page 268 starting on  
8 line 20.

9 Q. Mr. George, I'm going to ask the question, if you could  
10 provide the answer. This is your cross-examination. I get  
11 the pleasure of being you. If you could provide the answer.  
12 "Who did you talk to yesterday?" Starting on line 20.

13 A. "I talked to Detective Walsh, Detective McDonough and  
14 Sergeant Callahan."

15 Q. Did you tell them yesterday that the one person was a  
16 couple inches taller than the other, or did you tell them  
17 five or six inches? Mr. Beauchesne objects. The Court  
18 sustained in that form. The question: "Did you change your  
19 statement at that time from what you had said on  
20 October 20th, 1988?" The objection was sustained. "How  
21 long did you talk to them, Travis?"

22 A. "Maybe about ten or fifteen minutes."

23 Q. "Where did you speak with them?"

24 A. "In my hotel room."

25 Q. "You had a hotel room?"

1 A. "Yes."

2 Q. "Where is your hotel room?" The Court instructs you  
3 don't have to answer that. "Who paid for your hotel room?"  
4 Mr. Beauchesne: "The Commonwealth, your Honor, would offer  
5 to agree that we paid his transportation costs to and from  
6 his home and put him up in a motel while he's here to  
7 testify." The Court responds: "Standard operating  
8 procedure." Mr. Beauchesne: "Standard operating  
9 procedure." Do you recall that, Mr. George?

10 A. As I read it, I recall it.

11 Q. The Commonwealth never disclosed to you that they  
12 brought this witness from out of state and put him up in a  
13 hotel, did they?

14 A. No.

15 MR. CURRAN: I don't have anything further. Thank  
16 you, Mr. George.

17 REDIRECT EXAMINATION

18 BY MS. SCAPICCHIO:

19 Q. Mr. George, is there --

20 MR. ROACHE: Your Honor, may I?

21 THE COURT: Yes, go on.

22 MS. SCAPICCHIO: I forgot about him.

23 THE COURT: Go on.

24 CROSS-EXAMINATION

25 BY MR. ROACHE:

1 Q. Good morning, Mr. George.

2 A. Good morning, sir.

3 Q. Now, Mr. George, you were testifying that it's the  
4 obligation of the prosecution to disclose to defense counsel  
5 exculpatory evidence; is that correct, sir?

6 A. Yes, sir.

7 Q. It is the procedure for defense counsel in Massachusetts  
8 to obtain discovery from the assistant district attorney  
9 that is prosecuting the case and not directly from a police  
10 officer; isn't that so?

11 A. Yes.

12 Q. Okay. So, if a police officer wrote a report or had  
13 information, it would not be standard procedure for the  
14 police officer to report that information or give a copy of  
15 the report directly to defense counsel, correct?

16 A. Correct.

17 Q. It would be the standard procedure, it would be for the  
18 police officer to report or to give a report or to give  
19 whatever information he or she may have obtained to the  
20 district attorney's office, and it would be up to the  
21 district attorney's office to determine whether or not that  
22 information should be turned over to a defense counsel?

23 A. Yes, sir.

24 Q. Okay. So, it is the obligation of a district attorney's  
25 office and not the police department to turn over any

1 information, whether inculpatory or exculpatory to a defense  
2 counsel?

3 A. Yes.

4 Q. Now, this jury has heard a lot of talk about voir dires,  
5 and without being too technical, could you explain to the  
6 jury what a voir dire is?

7 A. A voir dire is if a witness came in here that was about  
8 to testify to things that the Judge had to determine the  
9 jury should hear, the jury would be taken out of the  
10 courtroom, and we'd have a hearing without you here. We'd  
11 actually run through that testimony without you here, the  
12 Judge would hear it and make a determination as to what you  
13 could hear, and you'd be brought back in and you'd hear it,  
14 so the voir dire is what happens when you're not here.

15 Q. All right. So in the case of the prosecution of  
16 Terrance Taylor and Shawn Drumgold with respect to  
17 Ricky Evans, there were a few voir dires?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. And getting back to exculpatory evidence for a moment,  
22 it is the obligation of the prosecution to determine whether  
23 or not information that it receives from whatever source is  
24 exculpatory, correct?

25 A. Yes.



1 Q. Okay. And if the prosecution determines that that  
2 information is not exculpatory, then it has no obligation to  
3 turn it over to defense counsel?

4 A. At their own peril.

5 Q. Correct. But initially it is the district attorney who  
6 makes the initial determination as to whether or not the  
7 information he or she may have received tends to be  
8 inculpatory or exculpatory?

9 A. Just like an umpire, he would determine what he wants to  
10 give you based on what he defines as exculpatory or not.

11 Q. And the rule is or the law is that the district  
12 attorney's obligation to turn over exculpatory information  
13 is when that district attorney determines that the  
14 information he or she may have received is substantial and  
15 material to aid in a defense of a case?

16 MS. SCAPICCHIO: Objection.

17 THE COURT: To the extent that your question  
18 involves an issue of law, it is not for this witness to be  
19 intoning on that issue of law. Can you rephrase that  
20 question?

21 MR. ROACHE: Well, your Honor, he's an experienced  
22 criminal defense lawyer. I think he knows the law.

23 THE COURT: It is for me to instruct on the law.  
24 The content of the exculpatory evidence obligation would be  
25 something we'll instruct the jury about. Do you want to

1 rephrase your question?

2 MR. ROACHE: Okay.

3 Q. Well, it would be up to the prosecution to determine  
4 whether or not the information the prosecution receives is  
5 sufficiently exculpatory in order for it to be obligated to  
6 turn it over to defense counsel?

7 MS. SCAPICCHIO: Objection.

8 THE COURT: As a matter of practice, not  
9 necessarily as a matter of law. Yes, you can have that  
10 question.

11 A. It's the prosecutor's call what they want to give you in  
12 terms of exculpatory evidence, but, like I said, it's at  
13 their own peril because someone might disagree.

14 Q. And there are times when defense counsel and prosecutors  
15 disagree as to whether or not information should have or  
16 should have not been turned over?

17 A. It happens all the time.

18 Q. It happens all the time. Now, you would agree with me  
19 that you cross-examined Mr. Evans during the course of the  
20 case when you were representing Terrance Taylor, you  
21 cross-examined him extensively about his prior criminal  
22 record, correct?

23 MS. SCAPICCHIO: Objection.

24 THE COURT: Overruled. Go on.

25 A. Yes.

1 Q. And you went through all of the cases that he had either  
2 pending or had been convicted of in the past?

3 A. My memory is I cross-examined him on those subjects.

4 Q. And, as a matter of fact, you even cross-examined him  
5 without objection over pending cases that had not yet been  
6 resolved?

7 A. I'm not disputing that.

8 Q. Okay. And you even cross-examined him about the death  
9 of his cousin, Willie Evans?

10 A. Yes.

11 Q. So you already, you knew about Mr. Evans' involvement in  
12 the case where his cousin, Willie, was killed and Mr. Evans  
13 was shot?

14 A. Well, if I asked him questions about it, I would have  
15 had to know.

16 Q. Well, you asked on page 217 of the trial transcript, you  
17 say, "December 14th, 1988, right about the time Willie  
18 died?" And the answer was, "Yes, somewhere in there." Then  
19 you asked, "Two days before Willie died?" The answer from  
20 Mr. Evans was, "Yeah." And then you say, "How do you  
21 remember?" And he answered -- strike that, the question  
22 was, "Now do you remember?" "Yeah, I remember that." "It's  
23 two days before you were shot?" And Mr. Evans' answer was,  
24 "Uh-hum." Do you remember that testimony, sir?

25 A. I remember it as you're reading it to me.

1 Q. So you do remember it. So you had information that was  
2 provided to you by the prosecution that Ricky Evans was a  
3 witness in a pending homicide case involving another murder,  
4 the murder of his cousin, Willie Evans?

5 A. Yes.

6 Q. And you asked Mr. Evans about who took him to get his  
7 warrants cleared up, didn't you?

8 A. Yes.

9 Q. And he answered Sergeant McDonough, didn't he?

10 A. Yes, he did.

11 Q. And he said, "I didn't go there, I went by myself"?

12 A. Yes.

13 Q. "He just drove me there"?

14 A. I remember that.

15 Q. And then you asked him, "He drove you there in a police  
16 car?" And his response was, "No," this is at page 219?

17 A. I remember that.

18 Q. Okay. "When did he take you?" His answer was, "About  
19 three months ago."

20 A. I recall that.

21 Q. Okay. Then you asked, "You had some warrants pending  
22 for you there?" His response was, "Uh-huh." Do you  
23 remember that?

24 A. Yes.

25 Q. "And what Court was that?" And he responded, "Roxbury."

1 Do you recall that?

2 A. Yes, I do.

3 Q. And then you asked him, "And did you appear before a  
4 Judge then?" His answer was, "Yes."

5 A. I remember that.

6 Q. Do you recall that?

7 A. Yes, I do.

8 Q. Okay. "And were the warrants removed?" And his answer  
9 was "Yes"?

10 A. I recall that.

11 Q. Okay.

12 A. Because I just read it.

13 Q. "And were those warrants for not coming to court?" And  
14 his answer was, "Yes."

15 THE COURT: Are you asking this witness to ratify  
16 what's in the transcript that the jury is going to have?

17 MR. ROACHE: Just this portion, your Honor.

18 THE COURT: All right, go on.

19 Q. And his answer was or your question was, "Were those  
20 questions for not coming to court?" His answer was,  
21 "Yes"?

22 A. I remember that.

23 Q. Okay. So, back in October of 1989, Mr. Evans testified  
24 that he went to court, that he was driven to court by  
25 Detective McDonough, who he described as Sergeant McDonough,

1       who drove him to court, that Mr. McDonough did not go into  
2       the court and that Mr. Evans appeared in court before a  
3       Judge and had his defaults removed?

4               MS. SCAPICCHIO: Is there a question?

5       Q. Isn't that what your memory is of what Mr. Evans'  
6       testimony is?

7               THE COURT: The objection is sustained. The  
8       testimony is the testimony. If there's anything you want  
9       him to add to it, you ask him about that. The objection is  
10      sustained.

11      Q. Now, Mr. George, you have a memory of Mr. Fallon, your  
12      investigator, locating Mr. Evans at 3 Trull Street in  
13      Dorchester on September 12th, 1988 -- strike that,  
14      September 12th, 1989?

15      A. After the questioning today, I do.

16      Q. Okay. There isn't any question that Mr. Fallon located  
17      Mr. Evans at 3 Trull Street in Dorchester?

18      A. I don't dispute that he located him.

19      Q. Okay. And you recall that there was a voir dire prior  
20      to trial or a pretrial hearing concerning that issue?

21      A. Yes, sir.

22      Q. Did Mr. Fallon write a report about his locating  
23      Mr. Evans at 3 Trull Street in Dorchester and give you a  
24      copy of that report?

25              MS. SCAPICCHIO: Objection. He didn't say he

1 located him at 3 Trull Street, he said he located him.

2 THE COURT: Sustained.

3 Q. Did Mr. Fallon write a report to you that he located  
4 Mr. Evans at 3 Trull Street in Dorchester?

5 MS. SCAPICCHIO: Objection.

6 THE COURT: Insofar as this is about the report,  
7 not the truth of the matter but whether he wrote a report,  
8 you can have it.

9 A. Not that I recall.

10 Q. Okay. Now, you had indicated before that you no longer  
11 have your defense file concerning your representation of  
12 Terrance Taylor; is that correct?

13 A. That's correct.

14 Q. So you have no independent memory as you sit here today  
15 as to the contents of your defense file?

16 MS. SCAPICCHIO: Objection.

17 THE COURT: Overruled.

18 A. Bits and pieces, but, no.

19 Q. Okay. And you don't know why it is that you don't have  
20 your defense file; isn't that true?

21 MS. SCAPICCHIO: Objection.

22 THE COURT: Overruled.

23 A. I believe that I've said in the past that I turned the  
24 file over to Terrance Taylor's family at some point when he  
25 moved onto other things.

1 Q. And did you also testify in the past that it may have  
2 been lost?

3 A. Well, I didn't say lost, I said it must have been  
4 destroyed in the storage process, but because Taylor's case,  
5 he was acquitted so there was no reason to keep the file.  
6 There was no appeal.

7 Q. Well, in any event, it may have been destroyed?

8 A. Yeah, but not by me. I don't want it to seem like I've  
9 lost a file or I've destroyed a file, that's not what  
10 happened. It might have been -- my memory is I don't have  
11 it. My memory, the fact is I don't have it now and I  
12 haven't had it for many years.

13 Q. Do you recall testifying at your deposition that back in  
14 1988 a lot of the information that was stored you stored in  
15 a computer?

16 A. Yes.

17 Q. And that you had difficulty when you obtained a new  
18 computer system of removing files from one computer and  
19 putting them into another computer?

20 A. I remember the computer systems I was using then  
21 belonged to someone else, they belonged to the office I was  
22 in. I left there and started my own law office with my own  
23 computers, so it's not as easy as it is now, but back then  
24 you would have had to download everything onto discs and  
25 floppies to bring with you, and it wasn't my lawfirm.



1 That's what I meant when I said that, yes.

2 Q. Okay. But it would have been your practice as a defense  
3 lawyer if you were moving from one firm to another to take  
4 your files with you?

5 A. Yes.

6 Q. Okay. And you don't have any memory as you sit here  
7 today as to whether or not you were able to take your file  
8 because you were able to extract that information from the  
9 computer and remove it to a new file, a new computer in the  
10 office that you set up?

11 A. I have no memory of being able to do that.

12 Q. All right.

13 MR. ROACHE: That's all I have, your Honor. Thank  
14 you. Thank you, Mr. George.

15 THE WITNESS: Thanks.

16 THE COURT: Ladies and gentlemen, we're going to  
17 go through, if this is all right with everyone, past the  
18 break time. We won't take a break until about 11:45. Is  
19 that all right with you? All right. You know, let's take a  
20 five-minute break, a quick break for those of you who need  
21 it and then we'll come back. All rise for the jury.

22 MS. SCAPICCHIO: One of the jurors left her  
23 notebook or his notebook open right there. I just wanted to  
24 clear that up before we left.

25 THE COURT: Is that it? Five minutes.

1 MS. SCAPICCHIO: Thank you.

2 (A recess was taken.)

3 THE CLERK: All rise for the jury.

4 THE COURT: You can all be seated. Sorry for the  
5 shorter snack period, ladies and gentlemen, but we have to  
6 end earlier today because one of the lawyers has an argument  
7 in the Court of Appeals, and I have to swear in new citizens  
8 again, so we wanted to squeeze as much as we could. Go on,  
9 Ms. Scapicchio.

10 MS. SCAPICCHIO: Thank you.

11 REDIRECT EXAMINATION

12 BY MS. SCAPICCHIO:

13 Q. Attorney George, on cross-examination, Mr. Curran asked  
14 you about whether or not you had any knowledge that another  
15 witness by the name of Johnson was put up at the  
16 Howard Johnson's, I'm sorry, was put up in a hotel, not at  
17 the Howard Johnson's, at the request of the district  
18 attorney's office. Do you remember your answer being that  
19 you didn't recall that?

20 A. Yes.

21 Q. Mr. Curran didn't show you the next page of that  
22 transcript, 144, CR 00264. Can you read lines 1 through 16  
23 to yourself, please.

24 A. Okay.

25 MS. SCAPICCHIO: It is TR 264. This is 1JE.

1 Q. Attorney George, having read that portion of the trial  
2 testimony, does that refresh your memory as to whether or  
3 not there was a stipulation about this particular witness,  
4 Mr. Johnson, at a hotel room?

5 A. Yes.

6 Q. And explain to the jury what a stipulation is.

7 A. A stipulation is an agreement between the attorneys. In  
8 other words, you're not fighting about it, you're not  
9 arguing about that point, you agree on it.

10 Q. So, having read that page of the transcript, 144, does  
11 that refresh your memory as to whether or not you knew  
12 Mr. Johnson as an out of state witness was placed in a hotel  
13 room?

14 A. Yes.

15 Q. And is there a difference in your mind in terms of  
16 cross-examining witnesses between a witness who was brought  
17 in from out of state and has nowhere to stay and stays in a  
18 hotel and a witness who was put up while he lives here in  
19 Massachusetts in a hotel for the convenience of the police  
20 department?

21 A. There's a big difference.

22 Q. What's the difference?

23 A. Someone who is coming from out of state has no place to  
24 stay because they're not home. If someone is home, they  
25 don't need to stay in a hotel room.

1 Q. And then on cross-examination Mr. Curran asked you  
2 questions and Mr. Roache asked you questions about the duty  
3 of the prosecutor to turn over exculpatory evidence. Is  
4 your experience as a criminal defense attorney that the  
5 prosecutors are the ones out in the field talking to the  
6 witnesses on a daily basis?

7 A. Not a lot of prosecutors do that.

8 Q. Okay. Is it fair to say that it's actually the  
9 detectives, the homicide detectives that are out talking to  
10 witnesses?

11 A. Almost all of the time it's the detectives that are  
12 investigators talking to the witnesses.

13 Q. So if the detectives don't give the information to the  
14 prosecutors the prosecutors can't give it to you; is that  
15 right?

16 A. Right.

17 Q. So whether it's the prosecutor's duty or not the  
18 prosecutor's duty, he has to get the information from the  
19 detectives; is that right?

20 A. They can't give you something they don't have.

21 Q. Now, you were also asked by Mr. Curran on  
22 cross-examination to read a portion of your deposition where  
23 Mr. Curran directed you to a statement about do you have a  
24 memory, and this is regarding the hotel, that it was not  
25 disclosed to you or do you just don't know, and he read up

1 to the line that said, "I have no memory." This is page 173  
2 of your deposition. Could you read line 20, the very next  
3 line that Mr. Curran didn't read to you when he refreshed  
4 your memory.

5 A. You want me to read it to myself?

6 Q. No, please read it out loud. What's the very next  
7 question after you said, "I have no memory"?

8 A. "I have no memory of it being disclosed to me. I note  
9 that as I reviewed my cross-examination, I didn't ask about  
10 it, which leads me to believe that it was not disclosed  
11 because I would not have forgotten."

12 Q. So, at your deposition when you were deposed in this  
13 case, you didn't leave the impression in Mr. Curran's mind  
14 or anyone's mind that you knew about it and you forgot, you  
15 told them right then that you didn't know about it, you  
16 never knew about it, had you known about it, you would have  
17 asked about it on cross-examination, right?

18 A. Yes.

19 Q. Now, you were also asked questions on cross-examination  
20 by Mr. Curran about whether or not Mr. Callahan was in the  
21 courtroom on Day 7 of the testimony in this case and he  
22 asked you to read an excerpt about whether or not  
23 Mr. Callahan went to get a defense witness or something of  
24 that nature. Do you remember that Mr. Evans in this case  
25 testified on Day 6?

1 A. I don't remember what day, but, I mean --

2 MS. SCAPICCHIO: May I approach the witness, your  
3 Honor?

4 THE COURT: Yes.

5 A. We don't have to disagree about it. Okay, yes.

6 Q. And when you asked the question in the courtroom of  
7 Mr. Evans about his communications with Mr. Callahan, you  
8 actually pointed to Detective Callahan in the courtroom,  
9 right?

10 A. Yes.

11 Q. And you wouldn't have done that if Detective Callahan  
12 wasn't there, right?

13 A. Unless I like pointing to an empty chair. Yes, it was  
14 him.

15 Q. And he was there?

16 A. Yes.

17 Q. And there's no doubt in your mind that he was there?

18 A. No.

19 Q. He was there during the process Mr. Evans was on the  
20 stand; is it fair to say?

21 A. Yes, that's fair to say.

22 Q. Now, is there any chance in your mind that you knew that  
23 Callahan was feeding information to Ricky Evans and you  
24 didn't ask about it at trial?

25 A. I don't think there's much chance of that, no.

1 Q. All right. Is it fair to say it didn't happen?

2 A. I'm telling you that if I had known about it, I would  
3 have likely asked about it.

4 Q. And if you had known about the free hotel, you would  
5 have asked about it?

6 A. Yes.

7 Q. If you had known about the free meals, you would have  
8 asked about it?

9 A. Yes.

10 Q. And if you had known about the money, would you have  
11 asked about it?

12 A. Yes.

13 Q. And if you had known about the pending cases, would you  
14 have asked about it?

15 A. Yes.

16 Q. And there's no doubt in your mind, Attorney George, as  
17 you sit here today, you didn't know about it because you  
18 didn't ask about it, right?

19 A. I didn't know about it.

20 MS. SCAPICCHIO: I have nothing further.

21 RECROSS-EXAMINATION

22 BY MR. CURRAN:

23 Q. Mr. George, your testimony and memory today is based on  
24 your limited review of Mr. Evans' cross-examination,  
25 correct?

1 A. Yes.

2 Q. You haven't had the opportunity to review the whole  
3 trial transcript?

4 A. No.

5 Q. You have not had the opportunity to review all the  
6 reports that were completed in this case?

7 A. No.

8 Q. And you haven't had the opportunity to discuss with any  
9 of your investigators or the attorneys that work with you  
10 what knowledge you had as a defense team?

11 A. No.

12 Q. It's based on your limited review of Ricky Evans'  
13 testimony that was provided to you?

14 A. And my review of my deposition.

15 Q. Well, let's get to your deposition on page 179, okay,  
16 starting on line 15. "Do you have any memory as you sit  
17 here today whether or not Phil Beauchesne did or did not  
18 share information with you that Ricky Evans was put up in a  
19 hotel?" And your answer was?

20 A. Do you want me to say it?

21 Q. Please.

22 A. "I do not remember Phil Beauchesne telling me that. I  
23 don't remember."

24 Q. Okay. And just so the question -- just so the record is  
25 clear, is it your memory that it did occur or it didn't



1 occur or that you're not sure one way or the other, just so  
2 the record is clear? What was it said?

3 A. Does it go down here?

4 Q. Yes.

5 A. "If I was being pressed on it, I'd say it did not occur  
6 because you had me review my cross-examination, but the best  
7 I can do is that I don't remember, but I am telling you that  
8 if I do not ask about it on cross, I don't believe that it  
9 was strategically left out or omitted by me because I don't  
10 even touch on it, I don't even go near it, so I'm thinking I  
11 didn't know. I can't remember any document that I read that  
12 told me so."

13 Q. Okay. So, again, your memory is based on your limited  
14 review of Ricky Evans' testimony on cross-examination?

15 A. And the deposition.

16 Q. And you don't know as you sit here today the facts of  
17 the Treas Carter murder?

18 A. No.

19 MS. SCAPICCHIO: Objection. Beyond the scope.

20 THE COURT: Sustained.

21 Q. So, you don't have the ability to weigh the facts as you  
22 knew it in 1988 or 1989 that you made a strategic decision  
23 not to cross-examine Ricky Evans on the hotel because of  
24 safety issues?

25 MS. SCAPICCHIO: Objection.

1 THE COURT: Sustained.

2 MR. CURRAN: I don't have any further questions.

3 THE COURT: Mr. Roache.

4 MR. ROACHE: Very quickly.

5 RECROSS-EXAMINATION

6 BY MR. ROACHE:

7 Q. Mr. George, you were asked by Ms. Scapicchio that had  
8 you known if Mr. Evans was paid any money by Detective  
9 Callahan, you would have inquired about that; is that  
10 correct?

11 A. Yes.

12 Q. And that's assuming that Mr. Evans was in fact paid  
13 money by Mr. Callahan, correct?

14 A. Yes.

15 Q. So if Mr. Callahan did not pay any money to Mr. Evans,  
16 there would be no reason for you to cross-examine him on  
17 that; isn't that so?

18 A. Right.

19 Q. Okay. Similarly, sir, if Detective Callahan did not  
20 promise, make any promises to Ricky Evans about the  
21 disposition of his pending cases, you would have no reason  
22 to cross-examine Ricky Evans?

23 MS. SCAPICCHIO: Objection.

24 THE COURT: Sustained.

25 Q. Ms. Scapicchio asked you on redirect examination if

1 Detective Callahan made any promises, rewards or inducements  
2 to Ricky Evans, you would have asked Mr. Evans about those  
3 promises, rewards and inducements, correct?

4 A. Yes.

5 Q. And that's assuming that Detective Callahan did make  
6 promises, rewards or inducements to Mr. Evans?

7 MS. SCAPICCHIO: Objection.

8 THE COURT: This is argument. Sustained.

9 Q. In any event, you did not question Mr. Evans about any  
10 promises, rewards or inducements except for the fact that  
11 defaults were removed, correct?

12 A. That's right.

13 MR. ROACHE: That's all I have. Thank you,  
14 Mr. George.

15 THE COURT: I think at this point, ladies and  
16 gentlemen, we have to suspend for the day. It's the  
17 situation when the Court of Appeals calls, someone has to  
18 argue before the Court of Appeals, we can't say no, so we  
19 had to say yes, and so that's why we had to end early.  
20 We'll have a full day tomorrow. We'll see you then. Don't  
21 talk about the case. Leave your notes here. Don't Twitter  
22 about it, don't go online, don't do any of the things that  
23 anybody might think about doing. I'm sure there's a more  
24 cogent way of describing it. We'll see you in the morning.  
25 All rise for the jury.

1 (Whereupon, the hearing was suspended at  
2 11:35 a.m.)  
3  
4

5 C E R T I F I C A T E  
6

7 UNITED STATES DISTRICT COURT )  
8 DISTRICT OF MASSACHUSETTS )  
9 CITY OF BOSTON )  
10

11 I, Valerie A. O'Hara, Registered Professional  
12 Reporter, do hereby certify that the foregoing transcript  
13 was recorded by me stenographically at the time and place  
14 aforesaid in No. 04-11193-NG, in re: Shawn Drumgold vs.  
15 Timothy Callahan and thereafter by me reduced to typewriting  
16 and is a true and accurate record of the proceedings.

17 /S/ VALERIE A. O'HARA  
18

19 \_\_\_\_\_  
20 VALERIE A. O'HARA

21 REGISTERED PROFESSIONAL REPORTER

22 DATED SEPTEMBER 15, 2009  
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